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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1997 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 1997

BEGINNING ON

**WEDNESDAY, THE TWENTY-NINTH DAY OF
JANUARY, A.D. 1997**

HELD IN THE CITY OF RALEIGH

ISSUED BY

SECRETARY OF STATE ELAINE F. MARSHALL

PUBLISHED BY AUTHORITY

AN ACT TO AMEND THE CONSTITUTION

OF THE STATE OF NORTH CAROLINA

IN RELATION TO

THE JUDICIAL SYSTEM

AND

THE JUDICIAL OFFICERS

AND

THE JUDICIAL OFFICERS OF THE

SEVERAL COUNTIES

OF THE STATE OF NORTH CAROLINA

AND

THE JUDICIAL OFFICERS OF THE

SEVERAL COUNTIES

OF THE STATE OF NORTH CAROLINA

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TABLE OF CONTENTS

Presiding Officers of the 1997 General Assembly	v
Executive Branch Officers	v
Officers and Members of the Senate	vi
Officers and Members of the House	vii
Legislative Services Staff Directors	ix
Constitution of North Carolina	xi
Regular Session 1997 Session Laws	1
Regular Session 1997 Resolutions	2349
Conference Report on the Continuation, Expansion and Capital Budgets	2387
Certification	2503
Executive Orders	2504
Regular Session 1997 Numerical Index	2593
Regular Session 1997 Session Laws Index	2599
Regular Session 1997 Resolution Index	2793

TABLE I

Summary of the results of the experiments

Experiment 1

Experiment 2

Experiment 3

Experiment 4

Experiment 5

Experiment 6

Experiment 7

Experiment 8

Experiment 9

Experiment 10

Experiment 11

Experiment 12

Experiment 13

Experiment 14

Experiment 15

STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 1997 GENERAL ASSEMBLY

DENNIS A. WICKER.....	President of the Senate	Lee
HAROLD J. BRUBAKER.....	Speaker of the House of Representatives	Randolph

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by
election and comprising the Council of State)

JAMES B. HUNT, JR.	Governor	Wilson
DENNIS A. WICKER.....	Lieutenant Governor	Lee
ELAINE F. MARSHALL	Secretary of State	Harnett
RALPH CAMPBELL, JR.....	Auditor.....	Wake
HARLAN E. BOYLES.....	Treasurer.....	Wake
MICHAEL E. WARD.....	Superintendent of Public Instruction	Wake
MICHAEL F. EASLEY	Attorney General	Brunswick
JAMES A. GRAHAM.....	Commissioner of Agriculture	Rowan
HARRY E. PAYNE, JR.	Commissioner of Labor	New Hanover
JAMES E. LONG.....	Commissioner of Insurance	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Hunt are carried in the appendix to this volume.

1997 GENERAL ASSEMBLY

SENATE OFFICERS

Name	Position	Address
DENNIS A. WICKER.....	President	Sanford, Lee County
MARC BASNIGHT.....	President Pro Tempore.....	Manteo, Dare County
FRANK W. BALLANCE, JR.....	Deputy President Pro Tempore.....	Warrenton, Warren County
JANET B. PRUITT.....	Principal Clerk	Raleigh, Wake County
LEROY CLARK, JR.....	Reading Clerk	Wendell, Wake County
CECIL GOINS.....	Sergeant-at-Arms	Raleigh, Wake County

SENATORS

District	Name	County	Address
1	MARC BASNIGHT	Dare	Manteo
2	FRANK W. BALLANCE, JR.	Warren	Warrenton
3	BEVERLY M. PERDUE.....	Craven	New Bern
4	PATRICK J. BALLENTINE (R)	New Hanover.....	Wilmington
5	CHARLES W. ALBERTSON	Duplin	Beulaville
6	R. L. MARTIN.....	Pitt	Bethel
7	LUTHER HENRY JORDAN, JR.	New Hanover.....	Wilmington
8	JOHN KERR III	Wayne	Goldsboro
9	Ed N. WARREN	Pitt	Greenville
10	ROY A. COOPER III	Nash.....	Rocky Mount
11	ALLEN H. WELLONS	Johnston.....	Smithfield
12	DON W. EAST (R).....	Surry	Pilot Mountain
12	VIRGINIA FOXX (R)	Watauga.....	Banner Elk
13	WILBUR P. GULLEY	Durham	Durham
13	JEANNE H. LUCAS	Durham	Durham
14	BRAD MILLER	Wake.....	Raleigh
14	ERIC MILLER REEVES.....	Wake.....	Raleigh
15	DANIEL E. PAGE (R).....	Harnett.....	Coats
16	ELEANOR KINNARD	Orange	Carrboro
16	HOWARD N. LEE	Orange	Chapel Hill
17 ***	J. RICHARD CONDER	Richmond	Rockingham
17 ****	WILLIAM R. PURCELL	Scotland	Laurinburg
17	AARON W. PLYLER	Union	Monroe
18	R. C. SOLES, JR.	Columbus.....	Tabor City
19	ROBERT G. SHAW (R)	Guilford	Greensboro
20	HAMILTON C. HORTON (R)	Forsyth	Winston-Salem
20	JAMES MARK MCDANIEL (R)	Forsyth	Pfafftown
21	HUGH WEBSTER (R).....	Caswell	Yanceyville
22	FLETCHER L. HARTSELL, JR. (R).....	Cabarrus.....	Concord
23	JIM PHILLIPS, SR.	Davidson.....	Lexington
24	ANTHONY E. RAND	Cumberland	Fayetteville
25	DAVID W. HOYLE	Gaston	Dallas
26	AUSTIN M. ALLRAN (R)	Catawba.....	Hickory
27	JOHN A. GARWOOD (R)	Wilkes.....	North Wilkesboro
27 *****	DONALD R. KINCAID (R)	Caldwell.....	Lenoir
27 *****	KENNETH R. MOORE(R).....	Caldwell.....	Lenoir
28	R. L. CLARK (R).....	Buncombe.....	Asheville
28	JESSE I. LEDBETTER (R)	Buncombe.....	Asheville
29 **	THOMAS K. JENKINS	Macon	Franklin
29 *	J. CLARK PLEXICO	Henderson.....	Hendersonville
30	DAVID WEINSTEIN.....	Robeson	Lumberton
31	WILLIAM N. MARTIN	Guilford	Greensboro
32	JOHN M. BLUST (R).....	Guilford	High Point
33	CHARLIE SMITH DANNELLY.....	Mecklenburg.....	Charlotte
34	T. L. ODOM	Mecklenburg.....	Charlotte
35	ROBERT A. RUCHO (R)	Mecklenburg.....	Matthews
36	JOHN H. CARRINGTON (R)	Wake	Raleigh
37	WALTER DALTON.....	Rutherford	Rutherfordton
38	BETSY L. COCHRANE (R)	Davie	Advance
39	JAMES FORRESTER (R)	Gaston	Stanley
40	LESLIE WINNER.....	Mecklenburg.....	Charlotte
41	LARRY SHAW	Cumberland	Fayetteville
42	ROBERT C. CARPENTER (R)	Macon	Franklin

- * Resigned effective 1/1/97
- ** Appointed 1/10/97
- *** Resigned effective 7/17/97
- **** Appointed 7/23/97
- ***** Resigned effective 7/26/97
- ***** Appointed 8/5/97

HOUSE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
HAROLD J. BRUBAKER.....	Speaker.....	Asheboro, Randolph County
CAROLYN B. RUSSELL.....	Speaker Pro Tempore.....	Goldsboro, Wayne County
DENISE G. WEEKS.....	Principal Clerk.....	Willow Springs, Wake County
SUSAN JOHNSON.....	Reading Clerk.....	Raleigh, Wake County
CLYDE COOK, JR.	Sergeant-at-Arms.....	Garner, Wake County

REPRESENTATIVES

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	W. C. OWENS, JR.	Pasquotank.....	Elizabeth City
2	EDWIN M. HARDY. (R)	Beaufort.....	Washington
3	JOHN M. NICHOLS (R)	Craven.....	New Bern
4	JEAN ROUSE PRESTON (R).....	Carteret.....	Emerald Isle
4	RONALD L. SMITH.....	Carteret.....	Atlantic Beach
5	HOWARD J. HUNTER, JR.....	Northampton.....	Murfreesboro
6	RICHARD EUGENE ROGERS.....	Martin.....	Williamston
7	THOMAS C. HARDAWAY.....	Halifax.....	Enfield
8	LINWOOD E. MERCER.....	Pitt.....	Farmville
9	M. W. ALDRIDGE (R).....	Pitt.....	Greenville
10	CYNTHIA B. WATSON (R).....	Duplin.....	Rose Hill
11	PHILIP A. BADDOUR, JR.....	Wayne.....	Goldsboro
12	NURHAM O. WARWICK.....	Sampson.....	Clinton
13	DAN MCCOMAS (R).....	New Hanover.....	Wilmington
14	DEWEY L. HILL.....	Columbus.....	Whiteville
14	E. DAVID REDWINE.....	Brunswick.....	Ocean Isle Beach
15	J. SAM ELLIS (R).....	Wake.....	Raleigh
16	DOUGLAS Y. YONGUE.....	Scotland.....	Laurinburg
17	THEODORE J. KINNEY.....	Cumberland.....	Fayetteville
17	MARY E. MCALLISTER.....	Cumberland.....	Fayetteville
18	JOHN W. HURLEY.....	Cumberland.....	Fayetteville
18	MIA MORRIS (R).....	Cumberland.....	Fayetteville
19	DONALD DAVIS (R).....	Harnett.....	Erwin
19	BOBBY RAY HALL (R).....	Lee.....	Sanford
20	BILLY J. CREECH (R).....	Johnston.....	Clayton
21	DANIEL T. BLUE, JR.....	Wake.....	Raleigh
22	JIM CRAWFORD.....	Granville.....	Oxford
22	MICHAEL S. WILKINS.....	Person.....	Roxboro
23	PAUL LUEBKE.....	Durham.....	Durham
23	H. M. MICHAUX, JR.....	Durham.....	Durham
23	GEORGE W. MILLER, JR.....	Durham.....	Durham
24	JOE HACKNEY.....	Orange.....	Chapel Hill
24	VERLA C. INSKO.....	Orange.....	Chapel Hill
25	CARY D. ALLRED (R).....	Alamance.....	Burlington
25	E. NELSON COLE.....	Rockingham.....	Reidsville
25	DENNIS REYNOLDS (R).....	Alamance.....	Graham
26	ALMA ADAMS.....	Guilford.....	Greensboro
27	STEVE WOOD (R).....	Guilford.....	High Point
28	FLOSSIE BOYD-MCINTYRE.....	Guilford.....	Jamestown
29	JOANNE W. BOWIE (R).....	Guilford.....	Greensboro
30	ARLIE F. CULP (R).....	Randolph.....	Ramseur
31	RICHARD T. MORGAN (R).....	Moore.....	Pinehurst
32	G. WAYNE GOODWIN.....	Richmond.....	Rockingham
33	FOYLE HIGHTOWER, JR.....	Anson.....	Wadesboro
34	FERN SHUBERT (R).....	Union.....	Marshville
35	CHARLOTTE A. GARDNER (R).....	Rowan.....	Salisbury
36	JIM BLACK.....	Mecklenburg.....	Matthews
37	PAUL R. MCCRARY.....	Davidson.....	Lexington
38	HAROLD J. BRUBAKER (R).....	Randolph.....	Asheboro
39	LYONS GRAY (R).....	Forsyth.....	Winston-Salem
40	REX L. BAKER (R).....	Stokes.....	King
40	WILLIAM S. HIATT (R).....	Surry.....	Mt. Airy
40	GENE WILSON (R).....	Watauga.....	Boone

41	JOHN W. BROWN (R).....	Wilkes	Elkin
41	GEORGE M. HOLMES (R).....	Yadkin	Hamptonville
42	FRANK MITCHELL (R).....	Iredell	Olin
43	C. ROBERT BRAWLEY (R).....	Iredell	Mooresville
44	JOHN R. GAMBLE, JR.	Lincoln	Lincolnton
45	CHERIE KILLIAN BERRY (R).....	Catawba	Newton
45	JOE L. KISER (R).....	Lincoln	Vale
46	CHARLES F. BUCHANAN (R)	Mitchell	Green Mountain
46	GREGG THOMPSON (R).....	Mitchell	Spruce Pine
47	WALTER G. CHURCH, SR.	Burke	Valdese
48	DEBBIE A. CLARY (R).....	Cleveland.....	Cherryville
48	ANDREW T. DEDMON.....	Cleveland.....	Earl
48	JOHN WEATHERLY (R).....	Cleveland.....	Kings Mountain
49	ROBERT C. HUNTER	McDowell.....	Marion
50	LARRY T. JUSTUS (R).....	Henderson.....	Hendersonville
51	LANIER CANSLER (R).....	Buncombe	Asheville
51	MARTIN L. NESBITT, JR.	Buncombe	Asheville
51	WILMA SHERRILL (R).....	Buncombe	Asheville
52	CHARLES M. BEALL.....	Haywood	Clyde
52	LISTON B. RAMSEY	Madison	Marshall
53	JAMES C. CARPENTER (R).....	Macon	Otto
54	DREW P. SAUNDERS.....	Mecklenburg	Huntersville
55	W. EDWIN MCMAHAN (R).....	Mecklenburg	Charlotte
56	MARTHA ALEXANDER	Mecklenburg	Charlotte
57	CONNIE WILSON (R).....	Mecklenburg	Charlotte
58	RUTH M. EASTERLING	Mecklenburg	Charlotte
59	W. PETE CUNNINGHAM.....	Mecklenburg	Charlotte
60	BEVERLY EARLE	Mecklenburg	Charlotte
61	CHARLES B. NEELY, JR. (R).....	Wake	Raleigh
62	DAVID MINER (R).....	Wake	Cary
63	JANE H. MOSLEY	Wake	Cary
64	BOB HENSLEY	Wake	Raleigh
65	RICK EDDINS (R).....	Wake	Raleigh
66	LARRY W. WOMBLE	Forsyth.....	Winston-Salem
67	WARREN C. (PETE) OLDHAM.....	Forsyth.....	Winston-Salem
68	W. M. IVES (R).....	Transylvania.....	Brevard
69	JIM GULLEY (R).....	Mecklenburg	Matthews
70	MILTON F. FITCH, JR.	Wilson	Wilson
71	JOE P. TOLSON	Edgecombe.....	Pinetops
72	GENE ARNOLD (R).....	Nash.....	Rocky Mount
73	P. WAYNE SEXTON (R).....	Rockingham	Stoneville
74	JULIA CRAVEN HOWARD (R).....	Davie	Mocksville
75	ALEX WARNER.....	Cumberland	Hope Mills
76	W. W. DICKSON (R).....	Gaston	Gastonia
77	CAROLYN B. RUSSELL (R).....	Wayne	Goldsboro
78	STAN FOX.....	Granville.....	Oxford
79	WILLIAM WAINWRIGHT	Craven	Havelock
80	WILLIAM ROBERT GRADY (R).....	Onslow	Jacksonville
81	TIMOTHY N. TALLENT (R).....	Cabarrus	Kannapolis
82	BOBBY HAROLD BARBEE, SR. (R).....	Stanley	Locust
83	EUGENE MCCOMBS (R).....	Rowan	Faith
84	MICHAEL DECKER (R).....	Forsyth.....	Walkertown
85	RONNIE SUTTON.....	Robeson	Pembroke
86	WILLIAM T. CULPEPPER, III	Chowan	Edenton
87	DONALD A. BONNER.....	Robeson	Rowland
88	THERESA H. ESPOSITO (R)	Forsyth.....	Winston-Salem
89	MARY L. JARRELL.....	Guilford	High Point
89	MARGARET M. JEFFUS.....	Guilford	Greensboro
90	RICHARD L. MOORE.....	Cabarrus	Kannapolis
91	EDGAR V. STARNES (R)	Caldwell	Granite Falls
92	J. RUSSELL CAPPS (R).....	Wake	Raleigh
93	JOHN RAYFIELD (R).....	Gaston	Belmont
94	JERRY C. DOCKHAM (R).....	Davidson	Denton
95	LEO DAUGHTRY (R).....	Johnston.....	Smithfield
96	EDD NYE	Bladen	Elizabethtown
97	JERRY BRASWELL	Wayne	Goldsboro
98	THOMAS E. WRIGHT	New Hanover.....	Wilmington

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR.	Legislative Services Officer
GERRY F. COHEN	Director of the Bill Drafting Division
THOMAS L. COVINGTON	Director of the Fiscal Research Division
DON F. FULFORD	Director of the Information Systems Division
ELAINE W. ROBINSON	Director of the Administrative Division
TERRENCE D. SULLIVAN	Director of the Research Division
J. MICHAEL MINSHEW	Building Superintendent and Chief of Security

THE HISTORY OF THE

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. *The equality and rights of persons.*

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. *Sovereignty of the people.*

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. *Internal government of the State.*

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. *Secession prohibited.*

This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. *Allegiance to the United States.*

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. Separation of powers.

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. Suspending laws.

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. Representation and taxation.

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. Frequent elections.

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. Free elections.

All elections shall be free.

Sec. 11. Property qualifications.

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. Right of assembly and petition.

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. Religious liberty.

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. Freedom of speech and press.

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. Ex post facto laws.

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted.

No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.*

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Court shall be open.*

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws.*

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.*

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.*

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. *Modes of prosecution.*

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. *Rights of accused.*

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. Right of jury trial in civil cases.

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. Jury service.

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. Bail, fines, and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. Imprisonment for debt.

There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. Treason against the State.

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. Militia and the right to bear arms.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. Quartering of soldiers.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. Exclusive emoluments.

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. Hereditary emoluments and honors.

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.*

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principles.*

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.*

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

Sec. 37. *Rights of victims of crime.*

(1) Basic rights. Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

- (a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.
- (b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.
- (c) The right as prescribed by law to receive restitution.
- (d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.
- (e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.
- (f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
- (g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
- (h) The right as prescribed by law to confer with the prosecution.

(2) No money damages; other enforcement. Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) No ground for relief in criminal case. The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.*

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.*

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.*

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.*

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts; apportionment of Representatives.*

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. Qualifications for Senator.

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. Qualifications for Representative.

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. Elections.

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. Term of office.

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. Vacancies.

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. Sessions.

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. Oath of members.

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. *President of the Senate.*

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) *President Pro Tempore - succession to presidency.* The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.*

The House of Representatives shall elect its Speaker and other officers.

Sec. 16. *Compensation and allowances.*

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.*

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.*

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.*

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.*

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.*

The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. *Action on bills.*

(1) Bills subject to veto by Governor; override of veto. Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) Amendments to Constitution of North Carolina. Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) Amendments to Constitution of the United States. Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) Joint resolutions. Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) Other exceptions. Every bill:

- (a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;
- (b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;
- (c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or
- (d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the

apportionment of Representatives among those districts and containing no other matter, shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) Local bills. Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

- (a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or
- (b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) Time for action by Governor; reconvening of session. If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) Return of bills after adjournment. For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment.

Sec. 23. Revenue bills.

No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. Limitations on local, private, and special legislation.

(1) *Prohibited subjects.* The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;
- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

Section 1. *Executive power.*

The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor: election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) *Succession as Governor.* The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may

deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. Oath of office for Governor.

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. Duties of Governor.

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) *Reconvened sessions.* The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) Sine die. If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term.

Sec. 6. *Duties of the Lieutenant Governor.*

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. *Other elective officers.*

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.*

The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.*

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.*

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. *Administrative departments.*

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV

JUDICIAL

Section 1. *Judicial power.*

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.*

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. *Judicial powers of administrative agencies.*

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. *Court for the Trial of Impeachments.*

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside

over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. Appellate division.

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. Supreme Court.

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. Court of Appeals.

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. Retirement of Justices and Judges.

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. Superior Courts.

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the

Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.*

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.*

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme

Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard *de novo*, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.*

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.*

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. Removal of Judges, Magistrates and Clerks.

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. District Attorney and Prosecutorial Districts.

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General

Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. Vacancies.

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. Revenues and expenses of the judicial department.

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. Fees, salaries, and emoluments.

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. Qualification of Justices and Judges.

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District

Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V

FINANCE

Section 1. *No capitation tax to be levied.*

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections, or to repel invasions;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond,

note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. Limitations upon the increase of local government debt.

(1) *Regulation of borrowing and debt.* The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) *Gift or loan of credit regulated.* No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond,

note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. Acts levying taxes to state objects.

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. Inviolability of sinking funds and retirement funds.

(1) *Sinking funds.* The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. Drawing public money.

(1) *State treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. Health care facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without

consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. Capital projects for industry.

Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. Joint ownership of generation and transmission facilities.

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any

co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. Capital projects for agriculture.

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. Higher Education Facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. Seaport and airport facilities.

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

- (a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;

- (b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and
- (c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.*

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be

permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. *Registration.*

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. *Qualification for registration.*

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. *Elections by people and General Assembly.*

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. *Eligibility to elective office.*

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. *Oath.*

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I,, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as, so help me God."

Sec. 8. *Disqualifications for office.*

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of

authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.*

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.*

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. *Sheriffs.*

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. *Merged or consolidated counties.*

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII CORPORATIONS

Section 1. *Corporate charters.*

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. *Corporations defined.*

The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX EDUCATION

Section 1. *Education encouraged.*

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) *General and uniform system: term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. School attendance.

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. State Board of Education.

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. Powers and duties of Board.

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. State school fund.

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. *County school fund.*

All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. *Higher education.*

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. *Benefits of public institutions of higher education.*

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. *Escheats.*

(1)**Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2)**Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.*

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than \$500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. *Mechanics' and laborers' liens.*

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

Sec. 4. *Property of married women secured to them.*

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. *Insurance.*

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the

insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.*

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.*

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.*

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.*

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII

MILITARY FORCES

Section 1. *Governor is Commander in Chief.*

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.*

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. *Power to revise or amend Constitution reserved to people.*

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. *Revision or amendment by Convention of the People.*

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. *Revision or amendment by legislative initiation.*

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are

in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. *Seat of government.*

The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. *State boundaries.*

The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.*

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.*

The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. *Conservation of natural resources.*

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire

and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 1997

S.B. 27

CHAPTER 1

AN ACT TO MAKE PROCEDURAL CHANGES IN THE CONFORMING
LEGISLATION CONCERNING GUBERNATORIAL VETO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-33(d2) reads as rewritten:

"(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until ~~the time for moving a reconsideration shall have expired,~~ the next business day after the bill was ratified, unless expressly ordered by that house where such bill was ordered enrolled. For the purpose of this section, a business day is a weekday other than one on which there is both a State employee holiday and neither house is in session. No bill required to be presented to the Governor under Article II, Section 22 of the North Carolina Constitution shall be recalled from the Enrolling Clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution."

Section 2. G.S. 120-6.1(a) reads as rewritten:

"(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary. If sufficient requests are received such that the session will not be reconvened, the Governor shall immediately issue a proclamation to that effect and so notify the President Pro Tempore of the Senate and the principal clerks and presiding officers of both houses."

Section 3. G.S. 120-29.1 reads as rewritten:

"§ 120-29.1. Approval of bills.

(a) If the Governor approves a bill, the Governor shall write upon the same, ~~to the left of and~~ below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: 'Approved ____ m. this ____ day of ____, ____' and shall sign the same as follows: '____ Governor'. The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: 'This bill having been presented to the Governor for his signature on the ____ day of ____, ____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This ____ day of ____, ____, ____ Enrolling Clerk'.

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the ~~presiding officers~~ principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: 'Became law notwithstanding the objections of the Governor, ____ m. this ____ day of ____, ____'. ~~The second of them to sign~~ principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of February, 1997.

Became law upon approval of the Governor at 10:42 a.m. on the 27th day of February, 1997.

H.B. 34

CHAPTER 2

AN ACT CONCERNING VOLUNTARY SATELLITE ANNEXATIONS
BY THE TOWN OF CATAWBA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the Town of Catawba.

Section 2. This act is effective when it becomes law
Became law on the date it was ratified.

H.B. 4

CHAPTER 3

AN ACT TO EXEMPT THE TOWN OF YADKINVILLE FROM CERTAIN STATUTORY REQUIREMENTS IN THE EXPANSION AND IMPROVEMENT OF THE TOWN'S SEWAGE TREATMENT PLANT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 143-128, 143-129, 143-131 and 143-132, the Town of Yadkinville may enter into contracts for the expansion and improvement of the town's sewage treatment plant in the manner and upon the terms and conditions the town considers appropriate.

Section 2. This act is effective when it becomes law but only applies to contracts entered into on or before January 1, 1998.

In the General Assembly read three times and ratified this the 6th day of March, 1997.

Became law on the date it was ratified.

S.B. 85

CHAPTER 4

AN ACT TO REGULATE DEER HUNTING IN WILSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to take or to hunt deer with rifles, except from a stationary stand elevated at least eight feet above the ground. The height of the stand described in this section shall be such that the bottom of the hunter's feet when standing are at least eight feet above the ground. As used in this section, the terms "to hunt" and "to take" are used as those terms are defined in G.S. 113-130(5a) and G.S. 113-130(7), respectively.

Section 2. Section 1 of Chapter 294 of the 1989 Session Laws reads as rewritten:

"Section 1. It is unlawful to shine a light intentionally upon a deer or to sweep a light in search of deer between the hours of 11:00 p.m. one-half hour after sunset and one-half hour before sunrise."

Section 3. Violation of this act is a Class 3 misdemeanor.

Section 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the State Highway Patrol, and by other peace officers with general subject matter jurisdiction.

Section 5. This act applies only to Wilson County.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of March, 1997.

Became law on the date it was ratified.

AN ACT TO ESTABLISH A NO-WAKE ZONE WITHIN THE CANALS AND WATERWAYS OF THE EIGHT AND ONE-HALF MARINA CONDOMINIUMS AND THE HOOP POLE CREEK AREA IN THE TOWN OF ATLANTIC BEACH.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to operate a vessel at greater than no-wake speed in the canals and waterways of 8 1/2 Marina Condominiums and the Hoop Pole Creek Area, located within the town limits of the Town of Atlantic Beach in Carteret County. No-wake speed is idle speed or a slow speed creating no appreciable wake.

Section 2. The Town of Atlantic Beach or its designee may place and maintain markers in accordance with the Uniform Waterway Marking System and any supplementary standards for that system adopted by the Wildlife Resources Commission. All markers of the no-wake speed zone must be buoys or floating signs placed in the water and must be in sufficient number and size to give adequate warning of the no-wake speed zone to vessels approaching from various directions.

Section 3. Violation of this act is a Class 3 misdemeanor.

Section 4. This act is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes.

Section 5. This act is effective when it becomes law, and is enforceable after markers complying with Section 2 of this act are placed in the water.

In the General Assembly read three times and ratified this the 20th day of March, 1997.

Became law on the date it was ratified.

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-407 is repealed.

Section 2. Effective January 1, 1997, G.S. 105-23(b) reads as rewritten:

"(b) Exception. -- An inheritance tax return is not required to be filed for an estate that meets all of the following conditions:

- (1) Its beneficiaries are all either Class A beneficiaries, as described in G.S. 105-4(a), or the surviving spouse.
- (2) Its gross value, including the value of transfers over which the decedent retained an interest and the value of gifts made within three years before the decedent's death, as provided in G.S. 105-2(a)(3), is less than ~~four hundred fifty thousand dollars (\$450,000)~~, six hundred thousand dollars (\$600,000)."

Section 3. G.S. 105-130.22 reads as rewritten:

"§ 105-130.22. Tax credit for construction of dwelling units for handicapped persons.

~~There shall be~~ is allowed to corporate owners of multifamily rental units located in ~~North Carolina~~ this State as a credit against the tax imposed by this Division, an amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit constructed by ~~such corporate owner which the corporate owner that conforms to the requirements of section (11x)~~ Volume I-C of the North Carolina Building Code for the taxable year within which the construction of ~~such the~~ dwelling unit is completed; ~~provided, that credit will be allowed under this section only for the number of such completed. The credit is allowed only for dwelling units completed during the taxable year which that were required to be built in compliance with section (11x)~~ Volume I-C of the North Carolina Building Code; ~~provided further, that if Code. If the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed by the provisions of this Division, such excess shall be allowed against the tax imposed by this Division allowed, the excess may be carried forward for the next succeeding year; and provided further, that in year.~~ In order to secure the credit allowed by this section the corporation shall file with its income tax return for the taxable year with respect to which such credit is to be claimed, a copy of the occupancy permit on the face of which ~~there shall be~~ is recorded by the building inspector the number of units completed during the taxable year ~~which conform to section (11x)~~ that conform to Volume I-C of the North Carolina Building Code. ~~When he has recorded~~ After recording the number of ~~such these~~ units on the face of the occupancy permit, the building inspector shall promptly ~~make and~~ forward a copy of the permit to the ~~Special Office for the Handicapped, Building Accessibility Section of the Department of Insurance."~~

Section 4. G.S. 105-151.1 reads as rewritten:

"§ 105-151.1. Tax credit for construction of dwelling units for handicapped persons.

~~There shall be~~ is allowed to resident owners of multifamily rental units located in ~~North Carolina~~ this State as a credit against the tax imposed by this Division an amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit constructed by the resident owner that conforms to Volume I-C of the North Carolina Building Code for the taxable year within which the construction of the dwelling unit is completed. The credit is allowed only for dwelling units completed during the taxable year that were required to be built in compliance with Volume I-C of the North Carolina Building Code. If the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed, the excess may be carried forward for the next succeeding year. In order to claim the credit allowed by this section, the taxpayer shall file with its income tax return a copy of the occupancy permit on the face of which is recorded by the building inspector the number of units completed during the taxable year that conform to Volume I-C of the North Carolina Building Code. After recording the number of these units on the face of the occupancy permit, the building inspector shall promptly forward a copy of the permit to the Building Accessibility Section of the Department of Insurance.

~~to the recommendations of section (11x) of the North Carolina Building Code for the taxable year within which the construction of the dwelling units is completed; provided, that credit will be allowed under this section only for the number of dwelling units completed during the taxable year that were required to be built in compliance with section (11x) of the North Carolina Building Code; provided further, that if the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed by this Division, the excess shall be allowed as a credit against the tax imposed by this Division for the next succeeding year; and provided further, that in order to secure the credit allowed by this section the taxpayer shall file with the income tax return for the taxable year with respect to which the credit is to be claimed, a copy of the occupancy permit on the face of which there shall be recorded by the building inspector the number of units completed during the taxable year that conform to section (11x) of the North Carolina Building Code. After recording the number of units on the face of the occupancy permit, the building inspector shall promptly forward a copy of the permit to the Special Office for the Handicapped, Department of Insurance."~~

Section 5. G.S. 105-163.010 reads as rewritten:

"§ 105-163.010. *(Repealed effective for investments made on or after January 1, 1999)* Definitions.

The following definitions apply in this Division:

- (1) ~~Affiliate. -- An individual or business that controls, is controlled by, or is under common control with another individual or business.~~
- (2) ~~Business. -- A corporation, partnership, association, or sole proprietorship operated for profit.~~
- (3) ~~Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.~~
- (4) ~~Equity security. -- Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.~~
- (5) ~~Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small~~

~~Business Investment Act of 1958, 15 U.S.C. §§ 661 et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars (\$10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.~~

(6) ~~Repealed by Session Laws 1991, c. 637.~~

(6a) ~~North Carolina Enterprise Corporation. -- A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.~~

(6b) ~~Pass-through entity. -- An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.~~

(7) ~~Qualified business venture. -- A business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.~~

(8) ~~Qualified grantee business. -- A business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.~~

(9) ~~Repealed by Session Laws 1993, c. 443, s. 1.~~

(9a) ~~Real estate-related business. -- A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from~~

~~which to conduct a business that is not itself a real estate-related business or (ii) a business that is not otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.~~

- (9b) ~~Selling or leasing at retail. -- A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.~~
- (9c) ~~Service-related industry. -- A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.~~
- (10) ~~Security. -- A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).~~
- (11) ~~Subordinated debt. -- Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt.~~
- (1) Affiliate. -- An individual or business that controls, is controlled by, or is under common control with another individual or business.
- (2) Business. -- A corporation, partnership, association, or sole proprietorship operated for profit.
- (3) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

- (4) Equity security. -- Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.
- (5) Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company. The term does not include, however, a business, other than a small business investment company, whose net worth, when added to the net worth of all of its affiliates, is less than ten million dollars (\$10,000,000). The term also does not include a business that does not generally market its services to the public and is controlled by a business that is not a financial institution.
- (6) North Carolina Enterprise Corporation. -- A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.
- (7) Pass-through entity. -- An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.
- (8) Qualified business venture. -- A business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- (9) Qualified grantee business. -- A business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research

Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

- (10) Real estate-related business. -- A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from which to conduct a business that is not itself a real estate-related business or (ii) a business that is not otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.
- (11) Security. -- A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).
- (12) Selling or leasing at retail. -- A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.
- (13) Service-related industry. -- A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.
- (14) Subordinated debt. -- Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

Section 6. G.S. 105-163.1(8) is repealed.

Section 7. G.S. 105-164.3(15) reads as rewritten:

- "(15) "Sale" Sale or selling. -- The transfer of title or possession of tangible personal property, conditional or otherwise, in any

manner or by any means whatsoever, for a consideration paid or to be paid.

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. The term also includes the furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. The term also includes a transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

Section 8. G.S. 105-236(5)d. reads as rewritten:

"d. No double penalty. -- If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency."

Section 9. G.S. 105-253(b)(3) reads as rewritten:

"(3) All taxes due from the corporation pursuant to the provisions of Article Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by the corporation to a supplier for remittance to this State or another state."

Section 10. G.S. 105-330.2(a) reads as rewritten:

"(a) The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined as follows:

- (1) For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.
- (2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires.

If the value of a new motor vehicle cannot be determined as of the date specified above, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State. The ownership, situs, and taxability of a classified motor vehicle listed

pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed."

Section 11. G.S. 105-449.95(a) reads as rewritten:

"(a) Calculation. -- At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor or licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the quarter is less than the amount the distributor or importer would have received if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier during each month of the quarter under the following schedule:

<u>Amount of Gasoline Purchased</u> <u>Each Month</u>	<u>Percentage</u> <u>Discount</u>
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%."

Section 12. G.S. 105-449.105(e) reads as rewritten:

"(e) Refund Amount. -- The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93."

Section 13. G.S. 105-449.106 reads as rewritten:

"§ 105-449.106. *Quarterly refunds for certain local governmental entities, nonprofit organizations, and taxicabs.*

(a) Government and Nonprofits. -- A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. Any of the following entities may receive a refund under this section:

- (1) A county or a municipal corporation.
- (2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
- (3) A volunteer fire department.
- (4) A volunteer rescue squad.
- (5) A sheltered workshop recognized by the Department of Human Resources.

An application for a refund allowed under this section must be made in accordance with this Part and must be signed by the chief executive officer

of the entity. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

(b) **Taxi.** -- A person who purchases and uses motor fuel in a taxicab, as defined in G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund must be made in accordance with this Part."

Section 14. G.S. 105-449.107 reads as rewritten:

"§ 105-449.107. *Annual refunds for off-highway use and use by certain vehicles with power attachments.*

(a) **Off-Highway.** -- A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section must be made in accordance with this Part.

(b) **Certain Vehicles.** -- A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by any of the following vehicles:

- (1) A concrete mixing vehicle.
- (2) A solid waste compacting vehicle.
- (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
- (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
- (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

The refund rate shall be computed by subtracting one cent (1¢) from the combined amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An application for a refund allowed under this section shall be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle."

Section 15. G.S. 105-449.108 reads as rewritten:

"§ 105-449.108. *When an application for a refund is due.*

(a) **Annual Refunds.** -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the

refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Upon Application. -- An application for a refund of excise tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund."

Section 16. G.S. 117-19(c), (d), and (e) are repealed.

Section 17. G.S. 119-15(5) reads as rewritten:

"(5) Kerosene supplier. -- Either of the following:

- a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
- b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane."

Section 18. G.S. 119-16.2(a) reads as rewritten:

"(a) When Required. -- A person may not engage in business as a kerosene supplier unless the person is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene supplier license issued under this section. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene distributor license. A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93."

Section 19. G.S. 159-48(c) reads as rewritten:

"(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence ~~thereof~~ of the debt for the purpose of, in the case of subdivisions (1) to (4), inclusive, through (4a) of this subsection, paying any capital costs of any one or more of the purposes mentioned therein and, in the case of subdivision (5), to finance the cost thereof: (5) of this subsection, to finance the cost of the purpose:

- (1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries,

- auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.
- (2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.
 - (3) Providing county homes for the indigent and infirm.
 - (4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.
 - (4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.
 - (5) Providing for the octennial revaluation of real property for taxation."

Section 20. G.S. 159I-30(e) reads as rewritten:

"(e) Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be payable solely from any one or more of the sources of payment authorized by this section as may be specified in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on such the bond or note are payable solely from the sources of payment specified in the bond order or ~~trust, trust~~ agreement under which it is authorized or ~~secured, provided that: secured.~~ The following limitations apply to payment from the specified sources:

- (1) Any such use of such these sources will not constitute a pledge of the unit's taxing power; and
- (2) The municipality is not obligated to pay such the principal or interest or premium except from such these sources."

Section 21. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 22. Section 2 of this act is effective January 1, 1997, and applies to the estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of March, 1997.

Became law upon approval of the Governor at 12:30 p.m. on the 21st day of March, 1997.

H.B. 77

CHAPTER 7

AN ACT TO DIRECT THE SECRETARY OF THE DEPARTMENT OF
HUMAN RESOURCES TO DISSOLVE CERTAIN AREA MENTAL
HEALTH AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of the Department of Human Resources shall dissolve all area mental health, mental retardation, and substance abuse authorities that are comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census. Prior to dissolution, the Secretary shall make the necessary and appropriate provisions relating to personnel and other matters, and dealing with the distribution of the assets and liabilities of the area authority. The dissolution shall take effect not later than June 30, 1997. The Secretary shall permit counties that were part of an area authority dissolved pursuant to this act to provide mental health services as a single-county area authority or to align with another single-county or multicounty area authority.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of March, 1997.

Became law upon approval of the Governor at 2:24 p.m. on the 26th day of March, 1997.

H.B. 149

CHAPTER 8

AN ACT TO REQUIRE LOCAL GOVERNMENTS TO ACCOUNT FOR
911 SURCHARGES IN THEIR ANNUAL FINANCIAL STATEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62A-7 reads as rewritten:

"§ 62A-7. *Emergency Telephone System Fund.*

The fiscal officer to whom 911 charges are remitted under G.S. 62A-6 shall deposit the charges in a ~~separate, restricted fund~~, special revenue fund pursuant to G.S. 159-26(b)(2). The Fund shall be known as the Emergency Telephone System Fund. The fiscal officer may invest money in the Fund in the same manner that other money of the local government may be invested. The fiscal officer shall deposit any income earned from such an investment in the Emergency Telephone System Fund."

Section 2. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 20th day of March, 1997.

Became law upon approval of the Governor at 2:30 p.m. on the 26th day of March, 1997.

S.B. 86

CHAPTER 9

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TWO SECTIONS OF THE GENERAL STATUTES IN NEED OF PROMPT CORRECTIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-597 reads as rewritten:

"§ 1-597. *Regulations for newspaper publication of legal notices, advertisements, etc.*

Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails ~~as second-class matter~~ in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North

Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section.

Section 2. The prefatory language of subsection (b) of Section 20.14B of Chapter 18 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"(b) G.S. 143-34.6 reads as rewritten:"

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of March, 1997.

Became law upon approval of the Governor at 2:34 p.m. on the 26th day of March, 1997.

H.B. 29

CHAPTER 10

AN ACT TO INCREASE THE MAXIMUM RAFFLE CASH PRIZES AND THE FAIR MARKET VALUE OF RAFFLE MERCHANDISE PRIZES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.15(d) reads as rewritten:

"(d) The maximum cash prize that may be offered or paid for any one raffle is ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000). No real property may be offered as a prize in a raffle. The total cash prizes offered or paid by any nonprofit organization or association may not exceed ten thousand dollars (\$10,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed fifty thousand dollars (\$50,000) in any calendar year."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of March, 1997.

Became law on the 30th day of March, 1997, after presentation to the Governor.

H.B. 586

CHAPTER 11

AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. That part of Section 1 of Chapter 6 of the Session Laws of the 1991 Extra Session which rewrote G.S. 163-201(a) is repealed.

Section 2. G.S. 163-201(a) reads as rewritten:

"(a) For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in 1982 1998 and every two years thereafter, the State of North Carolina shall be divided into ~~11~~ 12 districts as follows:

~~FIRST DISTRICT: Beaufort, Bertie, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Lenoir, Martin, Northhampton, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.~~

~~SECOND DISTRICT: Caswell, Durham, Edgecombe, Granville, Halifax, Nash, Person, Vance, Warren, and Wilson Counties; and the O'Neals Township in Johnston County.~~

~~THIRD DISTRICT: Bladen, Duplin, Harnett, Jones, Lee, Onslow, Pender, Sampson, and Wayne Counties; the following townships of Johnston County: Banner, Bentonsville, Beulah, Boon Hill, Clayton, Cleveland, Elevation, Ingrams, Meadow, Micro, Pine Level, Pleasant Grove, Selma, Smithfield, Wilders, and Wilson Mills; and the following townships of Moore County: 1 (Carthage), 4 (Ritters), 5 (Deep River), 6 (Greenwood), and 10 (Little River).~~

~~FOURTH DISTRICT: Chatham, Franklin, Orange, Randolph, and Wake Counties.~~

~~FIFTH DISTRICT: Alexander, Alleghany, Ashe, Forsyth, Rockingham, Stokes, Surry, and Wilkes Counties.~~

~~SIXTH DISTRICT: Alamance, Davidson, and Guilford Counties.~~

~~SEVENTH DISTRICT: Brunswick, Columbus, Cumberland, New Hanover, and Robeson Counties.~~

~~EIGHTH DISTRICT: Anson, Cabarrus, Davie, Hoke, Montgomery, Richmond, Rowan, Scotland, Stanly, and Union Counties; and the following townships of Moore County: 2 (Bensalem), 3 (Sheffields), 7 (McNeills), 8 (Sand Hill), and 9 (Mineral Springs); and the following townships of Yadkin County: Boonville, East Bend, Fall Creek, Forbush, Knobs, and Liberty.~~

~~NINTH DISTRICT: Iredell, Lincoln, and Mecklenburg Counties; and the following townships of Yadkin County: Buck Shoal and Deep Creek.~~

~~TENTH DISTRICT: Burke, Caldwell, Catawba, Cleveland, Gaston, and Watauga Counties; and the following townships of Avery County: Banner Elk, Beech Mountain, Cranberry, Linville, and Wilsons Creek.~~

~~ELEVENTH DISTRICT: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties; and the following townships of Avery County: Altamont, Roaring Creek, and Toe River.~~

District 1: Beaufort County: Chocowinity township, Richland township, Washington township: the remainder not in District 3; Bertie County, Craven County: Epworth *, Cove City *, Dover *, Fort Barnwell *, First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Country Club *, Rhems *: the remainder not in District 3; Jasper *: Edgecombe County, Gates County, Granville County: Antioch *, Corinth *, Oak Hill *, Credle *, East Oxford *, South Oxford *, West Oxford Elementary *, Salem *, Sassafras Fork *, Walnut Grove *; Greene County, Halifax County, Hertford County, Jones County: Beaver Creek *, Chinquapin *, Cypress Creek *, Pollocksville *, Trenton *, White Oak *; Lenoir County: Contentnea *, Institute *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Moseley Hall *, Sandhill *, Vance *; Martin County, Northampton County, Person County: Allensville, Cunningham-Chub Lake, Holloway, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Pitt County: Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County, Warren County, Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *, Plymouth #3 *; Wayne County: Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #5 *, Eureka *, Fremont *, Saulston *, Pinewood *; Wilson County: Black Creek *, Gardners *, Saratoga *, Stantonsburg *, Toisnot *, Wilson A *, Wilson B *, Wilson C *, Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson I *, Wilson M *, Wilson N *, Wilson Q *.

District 2: Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Tally Ho *; Harnett County, Johnston County, Lee County, Nash County, Sampson County: Kitty Fork *, Keener *, Herring *, Newton Grove *, Northeast Clinton *, Central Clinton *, East Clinton *, West Clinton *, Giddensville *, Turkey *, Westbrook *; Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-31 *, Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-38 *, Raleigh 01-40 *, Raleigh 01-46 *, Bartons Creek #2 *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Raleigh 01-27 Part, Neuse #1 *, Neuse #2 *, New Light #1 *, New Light #2 *, St. Marys #1 *, St. Marys #2 *, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *; Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson D *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

District 3: Beaufort County: Bath township, Long Acre township, Pantego township, Washington township: Tract 9905: Block Group 5: Block 522A, Block 528A; Camden County, Carteret County: Carteret County; Chowan

County, Craven County: Ernul *, Vanceboro *, Bridgeton *, Truitt *, Harlowe *, Croatan *, Havelock *, Grantham *, Sixth Ward *, Rhems *: Tract 9604: Block Group 7: Block 701, Block 702, Block 704; River Bend *, Trent Woods *, Woodrow *: Currituck County; Dare County; Hyde County; Jones County: Tuckahoe *: Lenoir County: Falling Creek *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Woodlington *: Onslow County, Pamlico County; Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Chicod *, Farmville West *, Farmville East *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *: Tyrrell County, Washington County: Scuppernon *, Skinnersville *: Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #4 *, Indian Springs *, White Hall *, New Hope *, Pikeville *, Stoney Creek *.

District 4: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers Crossroads *, Cape Fear *, East Pittsboro *, West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, New Hope *, Oakland *, East Williams *, West Williams *: Durham County, Orange County, Person County: Bushy Fork, Flat River, Mt. Tirzah, Olive Hill, Hurdle Mills; Wake County: Raleigh 01-04 *, Raleigh 01-11 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-39 *, Raleigh 01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *, Raleigh 01-45 *, Bartons Creek #1 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Panther Branch *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys #7, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *, White Oak #2 *.

District 5: Alamance County: Central Boone *, North Boone *, South Boone *, West Boone *, Boone #5 *, East Burlington *, North Burlington *, South Burlington *, West Burlington *, Burlington #5 *, Burlington #6 *, Burlington #7 *, Burlington #8 *, Faucette *, East Graham *, North Graham *, West Graham *, Graham #3 *, Haw River *, North Melville *, South Melville *, Morton *, Pleasant Grove *: Alleghany County; Ashe County; Caswell County, Davie County; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Clemmons #1 *, Clemmons #2 *, Clemmons #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *,

South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Rockingham County, Stokes County; Surry County.

District 6: Alamance County: Albright *, Burlington #9 *, Coble *, South Graham *, Melville #3 *, North Newlin *, South Newlin *, Patterson *, North Thompson *, South Thompson *; Chatham County: North Siler City *, South Siler City *; Davidson County: Alleghany *, Central *, Holly Grove *, Liberty *, Cotton *, Southmont *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Lexington No. 1 *, Lexington No. 2 *, Ward No. 6 *, Welcome *, Silver Hill *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-16 *, GB-17 *, GB-20 *, GB-21 *, GB-22 *, GB-23 *, GB-27A *, GB-28 *, GB-31 *, GB-32 *, GB-34A *, GB-35A *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-43 *, HP-04 *, HP-08 *, HP-09 *, HP-14 *, HP-16 *, HP-17 *, HP-18 *, HP-20 *, HP-21 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Gibsonville *, Whitsett *, Greene *, Jamestown-3 *, North Jefferson *, South Jefferson *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *, South Sumner *, North Washington *, South Washington *, GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GIB-G *, GB-24C *, GB-27C *, GB-35C *; Moore County: Moore County; Randolph County, Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Faith Noncontiguous, Locke *, Sumner *, Morgan I *, Morgan II *, Mt. Ulla *, Gold Knob *, Granite Quarry *, Hatters Shop *, Milford Hills *, Trading Ford, West Ward II *, Trading Ford Noncontiguous A, Steele *.

District 7: Bladen County; Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *,

Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Montclair *, Seventy First #2 *, Seventy First #3 *, Duplin County, New Hanover County, Pender County, Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *; Sampson County: Clement *, Harrells *, Salemburg *, Ingold *, Autryville *, Roseboro *, Mingo *, Plainview *, Southwest Clinton *, Rowan *, Garland *, Lakewood *.

District 8: Anson County, Cabarrus County, Cumberland County: Westarea *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #9 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #21, Manchester *, Spring Lake *, Beaver Lake *, Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *; Hoke County, Montgomery County; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *; Scotland County, Stanly County; Union County.

District 9: Cleveland County, Gaston County, Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 10 *, Charlotte Pct. 18 *, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte Pct. 32 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 36 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 45 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *, Charlotte Pct. 50 *, Charlotte Pct. 51 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *, Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *; Tract 0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block 340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A, Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block 356, Block 357, Block 361; Charlotte Pct. 79 *, Charlotte Pct. 80 *, Charlotte Pct. 83 *, Charlotte Pct. 84 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *,

Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, BER *, CCK *, CO1 *, LEM *, LC1 - North, MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *.

District 10: Alexander County; Avery County; Burke County, Caldwell County, Catawba County, Iredell County: Bethany *, Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Statesville #2 *, Statesville #4 *, Statesville #5 *, Turnersburg *, Union Grove *; Lincoln County, Mitchell County, Watauga County; Wilkes County, Yadkin County.

District 11: Buncombe County, Cherokee County; Clay County; Graham County; Haywood County; Henderson County, Jackson County; McDowell County; Macon County; Madison County; Polk County; Rutherford County; Swain County; Transylvania County; Yancey County.

District 12: Davidson County: Abbotts Creek *, Arcadia *, Boone *, Hampton *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Midway *, Reeds *, Tyro *, Reedy Creek *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 8 *, Yadkin College *; Forsyth County: Broadbay #2 *, Ashley Middle School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *, Mt. Sinai Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Guilford County: GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-15 *, GB-18 *, GB-19 *, GB-24A *, GB-25 *, GB-26A *, GB-29 *, GB-30 *, GB-33 *, GB-36 *, GB-42 *, GB-44 *, GB-45 *, HP-01 *, HP-02 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-15 *, HP-19 *, HP-22 *, Jamestown-1 *, Jamestown-2 *, North Sumner *, GB-24B *, GB-26B *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *, Statesville #3 *, Statesville #6 *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 9 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 46 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 77 *: the remainder

not in District 9; Charlotte Pct. 78 *, Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 - South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County: Cleveland *, Franklin *, East Spencer *, Spencer *, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward III *, Scotch Irish *, Unity *."

Section 3. In the event that a court of competent jurisdiction holds that the plan enacted by Section 2 of this act is invalid because the total population range violates the one-person one-vote doctrine, and that decision is not reversed, then the plan enacted by Section 2 of this act in G.S. 163-201 is repealed and the following plan enacted in G.S. 163-201:

"District 1: Beaufort County: Chocowinity township, Long Acre township: Tract 9905: Block Group 3: Block 305, Block 306, Block 307, Block 308; Block Group 5: Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522B, Block 530; Richland township, Washington township; Bertie County, Craven County: Epworth *, Cove City *, Dover *, Fort Barnwell *, First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Country Club *, Rhems *: Tract 9604: Block Group 5: Block 516, Block 517, Block 518, Block 521D, Block 530B, Block 531C, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547A, Block 547B, Block 548, Block 549, Block 550, Block 556, Block 558, Block 559, Block 560, Block 561, Block 562B, Block 563, Block 564, Block 565, Block 566, Block 567, Block 568, Block 569, Block 570, Block 571, Block 572; Block Group 7: Block 711B, Block 712B, Block 738B, Block 739, Block 740, Block 741, Block 742, Block 743; Jasper *: Edgecombe County, Gates County, Granville County: Antioch *, Corinth *, Oak Hill *, Credle *, East Oxford *, South Oxford *, West Oxford Elementary *, Salem *, Sassafras Fork *, Walnut Grove *: Greene County, Halifax County, Hertford County, Jones County: Beaver Creek *, Chinguapin *, Cypress Creek *, Pollockville *, Trenton *, White Oak *: Lenoir County: Contentnea *, Institute *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Moseley Hall *, Sandhill *, Vance *: Martin County, Northampton County, Person County: Allensville, Cunningham-Chub Lake, Holloway, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Pitt County: Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County, Warren County, Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *, Plymouth #3 *: Wayne County: Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #5 *, Eureka *, Fremont *, Saulston *, Pinewood *: Wilson County: Black Creek *, Gardners *, Saratoga *, Stantonsburg *, Toisnot *, Wilson A *, Wilson B *, Wilson C *: Tract 0001: Block Group 3: Block 304, Block 305, Block 306, Block 307, Block 314, Block 315, Block 320, Block 321; Block Group 4: Block 406, Block 407, Block 408, Block 409, Block 410, Block 411,

Block 412, Block 420, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429; Tract 0002: Block Group 1: Block 104; Tract 0004: Block Group 1: Block 101, Block 102, Block 104, Block 126, Block 127; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222; Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson I *, Wilson M *, Wilson N *, Wilson Q *.

District 2: Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Tally Ho *; Harnett County, Johnston County, Lee County, Nash County, Sampson County: Kitty Fork *, Keener *, Herring *, Newton Grove *, Northeast Clinton *, Central Clinton *, East Clinton *, West Clinton *, Giddensville *, Southwest Clinton *: Tract 9706: Block Group 3: Block 332, Block 333, Block 334, Block 340, Block 342, Block 343; Tract 9708: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157; Block Group 2: Block 203B, Block 203C, Block 205C, Block 206, Block 209, Block 217; Turkey *, Westbrook *: Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-31 *: Tract 0511: Block Group 2: Block 202, Block 214; Tract 0523: Block Group 1: Block 134; Block Group 9: Block 905; Tract 0524.01: Block Group 1: Block 124, Block 125; Block Group 9: Block 918B, Block 918Y, Block 918Z; Tract 0524.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 111, Block 118, Block 119; Tract 0524.03: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 123, Block 126, Block 140, Block 141, Block 142, Block 143; Block Group 2: Block 201, Block 202, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 221, Block 222, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231; Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-38 *, Raleigh 01-40 *, Raleigh 01-46 *, Bartons Creek #2 *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Raleigh 01-27 Part, Neuse #1 *, Neuse #2 *, New Light #1 *, New Light #2 *, St. Marys #1 *, St. Marys #2 *, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *, Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson C *: Tract 0004: Block Group 2: Block 207; Wilson D *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

District 3: Beaufort County: Bath township, Long Acre township: Tract 9901: Block Group 1: Block 108A, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122A, Block 170, Block 171, Block 172, Block 173, Block 174; Tract 9902: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129A, Block 130A, Block 157A, Block 158A, Block 159A, Block 160A, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 173, Block 174, Block 175A, Block 176A, Block 177, Block 178, Block 179, Block 180, Block 181, Block 182, Block 183, Block 184, Block 185A, Block 186A, Block 187A, Block 188, Block 192, Block 193, Block 194; Tract 9905: Block Group 1, Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329A, Block 329B, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 343, Block 344; Block Group 4: Block 403A, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430; Block Group 5: Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 522C, Block 522D, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528B, Block 529, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 569, Block 577, Block 578, Block 579, Block 580, Block 581; Tract 9906: Block Group 1, Block Group 2: Block 225B, Block 235C; Block Group 4: Block 404B, Block 406, Block 407, Block 411, Block 412, Block 413, Block 414, Block 415, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434B, Block 435B; Pantego township; Camden County, Carteret County; Chowan County, Craven County: Ernul *, Vanceboro *, Bridgeton *, Truitt *, Harlowe *, Croaton *, Havelock *, Grantham *, Sixth Ward *, Rhems *: Tract 9604: Block Group 7: Block 701, Block 702, Block 704; River Bend *, Trent Woods *, Woodrow *: Currituck County; Dare County; Hyde County; Jones County: Tuckahoe *: Lenoir County: Falling Creek *,

Kinston #3 *, Kinston #4 *, Kinston #5 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Woodlington *, Onslow County, Pamlico County, Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Chicod *, Farmville West *, Farmville East *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *, Tyrrell County, Washington County: Scuppernong *, Skiddersville *, Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #4 *, Indian Springs *, White Hall *, New Hope *, Pikeville *, Stoney Creek *.

District 4: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers Crossroads *, Cape Fear *, East Pittsboro *, West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, South Siler City *: Tract 0203: Block Group 2: Block 201A; New Hope *, Oakland *, East Williams *, West Williams *, Durham County, Orange County, Person County: Bushy Fork, Flat River, Mt. Tirzah, Olive Hill, Hurdle Mills; Wake County: Raleigh 01-04 *, Raleigh 01-11 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-31 *: Tract 0524.01: Block Group 9: Block 934; Tract 0524.02: Block Group 1: Block 105A, Block 105B; Block Group 2: Block 201A; Tract 0524.03: Block Group 1: Block 116, Block 118, Block 119, Block 120, Block 121, Block 125, Block 127, Block 128, Block 148; Block Group 2: Block 243; Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-39 *, Raleigh 01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *, Raleigh 01-45 *, Bartons Creek #1 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Panther Branch *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys #7, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *, White Oak #2 *.

District 5: Alamance County: Central Boone *, North Boone *, South Boone *, West Boone *, Boone #5 *, East Burlington *, North Burlington *, South Burlington *, West Burlington *, Burlington #5 *, Burlington #6 *, Burlington #7 *, Burlington #8 *, Faucette *, East Graham *, North Graham *, West Graham *, Graham #3 *, Haw River *: Tract 0203: Block Group 6: Block 601F, Block 601G, Block 601H, Block 601J, Block 603C, Block 603D, Block 604, Block 605, Block 606, Block 607, Block 608; Block Group 7: Block 701D, Block 701E, Block 701G; Block Group 8: Block 801, Block 802C; Tract 0211: Block Group 1: Block 101, Block 102D, Block 102F; Block Group 2: Block 201, Block 203A, Block 204D; Tract 0212.01: Block Group 1: Block 101B, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block

117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129A, Block 129B, Block 129C, Block 130, Block 131, Block 132A, Block 132B, Block 133A, Block 133B, Block 134, Block 135, Block 136, Block 137; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205B, Block 212B, Block 214B, Block 218B, Block 219A, Block 219B, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226A, Block 226B, Block 227A, Block 227B, Block 228; Block Group 3, Block Group 4: Block 401, Block 402, Block 403A, Block 403B, Block 403C, Block 404A, Block 404B, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415A, Block 415B, Block 416A, Block 416B, Block 417A, Block 417B, Block 418, Block 419, Block 420A, Block 420B, Block 420C, Block 421A, Block 421C, Block 421E, Block 421F, Block 422, Block 423, Block 424, Block 425A, Block 425B, Block 426A, Block 426B, Block 426C, Block 427, Block 428, Block 429A, Block 429B, Block 432, Block 433B, Block 433C, Block 434A, Block 434B; Block Group 5; Tract 0213: Block Group 1: Block 104C, Block 105B, Block 106B; Block Group 2: Block 206B, Block 212B, Block 213B, Block 214, Block 226; North Melville *, South Melville *, Morton *, Pleasant Grove *; Alleghany County; Ashe County; Caswell County, Davie County; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belew's Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mineral Springs F. St.: Tract 0029.01: Block Group 1: Block 107, Block 108, Block 119, Block 120, Block 121, Block 122, Block 124; Tract 0029.02: Block Group 2: Block 211A; Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Rockingham County, Stokes County; Surry County.

District 6: Alamance County: Albright *, Burlington #9 *, Coble *, South Graham *, Haw River *: Tract 0211: Block Group 1: Block 102G, Block 103C; Block Group 2: Block 203C; Tract 0212.01: Block Group 4:

Block 421B, Block 421D, Block 430, Block 431, Block 433A, Block 433D, Block 435A, Block 435B, Block 435C, Block 436A, Block 436B, Block 437, Block 438, Block 439A, Block 439B, Block 440, Block 441, Block 442; Tract 0220: Block Group 1: Block 131C, Block 133B; Melville #3 *, North Newlin *, South Newlin *, Patterson *, North Thompson *, South Thompson *; Chatham County: North Siler City *, South Siler City *: Tract 0202: Block Group 2: Block 246, Block 247; Tract 0203: Block Group 1: Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152A, Block 152B, Block 153, Block 154, Block 155, Block 156, Block 157A, Block 157B, Block 158, Block 159A, Block 159B, Block 160A, Block 160B, Block 161, Block 162A, Block 162B, Block 163, Block 164A, Block 164B, Block 165, Block 166, Block 167; Block Group 2: Block 201B, Block 202, Block 203A, Block 203B, Block 204A, Block 204B, Block 205, Block 206, Block 207, Block 208A, Block 208B, Block 209, Block 210A, Block 210B, Block 211A, Block 211B, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219A, Block 219B, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225A, Block 225B, Block 226, Block 227, Block 228, Block 229A, Block 229B, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235A, Block 235B, Block 235C, Block 236, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245A, Block 245B, Block 246, Block 247, Block 248, Block 252A, Block 252B, Block 253, Block 254; Tract 0204: Block Group 2: Block 234, Block 235, Block 236, Block 241, Block 242, Block 243; Block Group 3, Block Group 4, Block Group 5: Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547; Block Group 6: Block 625, Block 626, Block 627, Block 628, Block 629, Block 630, Block 631, Block 632, Block 633, Block 634, Block 635, Block 638, Block 643, Block 644, Block 645, Block 646, Block 647, Block 648, Block 649, Block 650, Block 651, Block 652, Block 653, Block 654; Tract 0206: Block Group 1: Block 108; Davidson County: Alleghany *, Central *, Holly Grove *, Liberty *, Cotton *, Southmont *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Lexington No. 1 *, Lexington No. 2 *, Ward No. 6 *, Welcome *, Silver Hill *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-16 *, GB-17 *, GB-20 *, GB-21 *, GB-22 *, GB-23 *, GB-27A *, GB-28 *, GB-31 *, GB-32 *, GB-34A *, GB-35A *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-43 *, HP-04 *, HP-08 *, HP-09 *, HP-14 *, HP-16 *, HP-17 *, HP-18 *, HP-20 *, HP-21 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Gibsonville *, Whitsett *, Greene *, Jamestown-3 *, North Jefferson *, South Jefferson *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak

Ridge *, Stokesdale *, South Sumner *, North Washington *, South Washington *, GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GIB-G *, GB-24C *, GB-27C *, GB-35C *; Moore County: Moore County; Randolph County, Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Faith Noncontiguous, Locke *, Sumner *, Morgan I *, Morgan II *, Mt. Ulla *, Gold Knob *, Granite Quarry *, Hatters Shop *, Milford Hills *, Trading Ford, West Ward II *, Trading Ford Noncontiguous A, Steele *.

District 7: Bladen County; Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Montclair *, Seventy First #1 *: Tract 0033.02: Block Group 3: Block 307, Block 308, Block 312, Block 313; Seventy First #2 *, Seventy First #3 *: Duplin County, New Hanover County, Pender County, Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *; Sampson County: Clement *, Harrells *, Salemburg *, Ingold *, Autryville *, Roseboro *, Mingo *, Plainview *, Southwest Clinton *: Tract 9708: Block Group 2: Block 204, Block 205B, Block 207, Block 208; Block Group 3: Block 309, Block 310, Block 311A, Block 311B, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 319; Block Group 4: Block 410, Block 411, Block 412; Rowan *, Garland *, Lakewood *.

District 8: Anson County, Cabarrus County, Cumberland County: Westarea *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #9 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #21, Manchester *, Spring Lake *, Beaver Lake *, Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *: Tract 0033.01, Tract 0033.02: Block Group 1, Block Group 3: Block 301, Block 303, Block 304, Block 305, Block 306, Block 309, Block 310, Block 314; Hoke County, Montgomery County; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *; Scotland County, Stanly County; Union County.

District 9: Cleveland County, Gaston County, Mecklenburg County:
Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 5 *, Charlotte Pct. 6 *,
Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 10 *, Charlotte Pct. 18
*, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte
Pct. 32 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *,
Charlotte Pct. 36 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct.
45 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *,
Charlotte Pct. 50 *, Charlotte Pct. 51 *, Charlotte Pct. 57 *, Charlotte Pct.
58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *,
Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct.
67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *,
Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct.
74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract
0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block
340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A,
Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349,
Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block
356, Block 357, Block 361; Charlotte Pct. 79 *: Tract 0043.01: Block
Group 3: Block 306, Block 307, Block 322, Block 323; Tract 0059.01:
Block Group 2: Block 201Y, Block 201Z, Block 202, Block 203A, Block
203B, Block 204, Block 210A, Block 210B, Block 211A, Block 211B,
Block 212, Block 213, Block 215, Block 216, Block 217, Block 218, Block
219, Block 222A, Block 222B, Block 223, Block 224; Tract 0060.01:
Block Group 4: Block 413, Block 414, Block 418, Block 420, Block 421,
Block 423A, Block 423B, Block 423C, Block 424, Block 425, Block 426,
Block 427, Block 428, Block 430, Block 431; Charlotte Pct. 80 *, Charlotte
Pct. 83 *, Charlotte Pct. 84 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *,
Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *, Charlotte Pct.
90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte
Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, BER *, CCK *, CO1 *,
LEM *, LC1 - North, MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct.
102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *, PR1, PR2,
PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *.

District 10: Alexander County; Avery County; Burke County, Caldwell
County, Catawba County, Iredell County: Bethany *, Concord *, Davidson
*, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh
*, Statesville #1 *, Statesville #2 *: Tract 0601: Block Group 3: Block 311,
Block 314, Block 315, Block 316, Block 317, Block 318, Block 319B,
Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block
326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332,
Block 333, Block 334, Block 337; Block Group 4; Tract 0602: Block
Group 1: Block 113; Block Group 3: Block 301, Block 302; Tract 0605:
Block Group 3: Block 319, Block 320, Block 330; Tract 0606: Block
Group 1: Block 132, Block 133, Block 134, Block 135, Block 136, Block
137, Block 138A, Block 140, Block 141, Block 142, Block 143, Block 144;
Block Group 3: Block 301B, Block 303B, Block 304, Block 305B, Block
315C, Block 316, Block 318, Block 319, Block 320, Block 321, Block
324B, Block 325B; Statesville #4 *, Statesville #5 *, Turnersburg *, Union

Grove *; Lincoln County, Mitchell County: Bakersville, Bandana, Bradshaw, Cane Creek, Little Rock Creek, Glenn, Grassy Creek, Harrell, Poplar: Tract 9501: Block Group 3: Block 323B; Red Hill, Snow Creek;County: Watauga County; Wilkes County, Yadkin County.

District 11: Buncombe County, Cherokee County; Clay County; Graham County; Haywood County; Henderson County, Jackson County; McDowell County; Macon County; Madison County; Mitchell County: Poplar: Tract 9501: Block Group 3: Block 301B, Block 302, Block 303, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 324B, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330B, Block 332, Block 333, Block 334, Block 335B; Polk County; Rutherford County; Swain County; Transylvania County; Yancey County.

District 12: Davidson County: Abbotts Creek *, Arcadia *, Boone *, Hampton *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Midway *, Reeds *, Tyro *, Reedy Creek *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 8 *, Yadkin College *; Forsyth County: Broadbay #2 *, Ashley Middle School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *: Tract 0015: Block Group 1, Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206; Block Group 4: Block 403, Block 404, Block 407, Block 408, Block 409, Block 411, Block 412, Block 414, Block 417, Block 418, Block 419, Block 420; Block Group 5: Block 501, Block 502, Block 503, Block 504B, Block 505A, Block 506, Block 507, Block 509, Block 510, Block 511A, Block 514A, Block 515, Block 516; Tract 0016.01: Block Group 1: Block 103A, Block 106A, Block 117A, Block 119A; Block Group 3: Block 301, Block 302, Block 303, Block 307, Block 308; Tract 0029.01: Block Group 1: Block 111, Block 112, Block 123; Block Group 9: Block 908; Tract 0029.02: Block Group 3: Block 301A, Block 302, Block 303A, Block 304, Block 305, Block 306, Block 307A, Block 308A, Block 309A, Block 313A, Block 314A; Mt. Sinai Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Guilford County: GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-15 *, GB-18 *, GB-19 *, GB-24A *, GB-25 *, GB-26A *, GB-29 *, GB-30 *, GB-33 *, GB-36 *, GB-42 *, GB-44 *, GB-45 *, HP-01 *, HP-02 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-15 *, HP-19 *, HP-22 *, Jamestown-1 *, Jamestown-2 *, North Sumner *, GB-24B *, GB-26B *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *, Statesville #2 *: Tract 0606: Block Group 3: Block 305A, Block 306, Block

307, Block 308, Block 309, Block 310, Block 312, Block 313, Block 314, Block 315A, Block 315B, Block 317, Block 322, Block 323A, Block 338, Block 339; Block Group 5: Block 511; Statesville #3 *, Statesville #6 *: Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 9 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 46 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 77 *: Tract 0038.04: Block Group 2; Tract 0058.06: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106A, Block 107, Block 108A, Block 109, Block 110, Block 111A, Block 124A, Block 125, Block 126, Block 127, Block 128A, Block 128B, Block 129, Block 130; Tract 0059.03: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 343, Block 386, Block 387; Charlotte Pct. 78 *, Charlotte Pct. 79 *: Tract 0043.01: Block Group 3: Block 305, Block 311, Block 316, Block 317, Block 321; Tract 0059.01: Block Group 2: Block 214, Block 220; Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 - South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County: Cleveland *, Franklin *, East Spencer *, Spencer *, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward III *, Scotch Irish *, Unity *."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of March, 1997.

Became law on the date it was ratified.

H.B. 113

CHAPTER 12

AN ACT TO AUTHORIZE THE EXPANSION OF THE BOARD OF TRUSTEES OF THE COLLEGE OF THE ALBEMARLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-12(a) reads as rewritten:

"(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies.

Group One -- four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area,

the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two -- four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. Provided also, if a community college serves six or more counties outside of its administrative area, the board of trustees of that community college may authorize the county commissioners of one or more of each of those counties to elect an additional board member. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three -- four trustees, appointed by the Governor.

Group Four -- the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution."

Section 2. This act applies only to the College of the Albemarle.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of March, 1997.

Became law on the date it was ratified.

S.B. 289

CHAPTER 13

AN ACT TO RAISE THE CAP ON THE AMOUNT OF BONDS THAT MAY BE ISSUED BY THE NORTH CAROLINA HOUSING FINANCE AGENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122A-8 reads as rewritten:

"§ 122A-8. Bonds and notes.

The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of ~~not exceeding one billion five hundred million dollars (\$1,500,000,000) bonds of the Agency to carry out and effectuate its corporate purposes; provided, however, that not more than fifty million dollars (\$50,000,000) bonds shall be issued prior to June 30, 1971.~~ of

bonds and notes of the Agency to carry out and effectuate its corporate purposes. The Agency also is hereby authorized to provide for the issuance, at one time or from time to time of (i) bond anticipation notes in anticipation of the issuance of such bonds and (ii) construction loan notes to finance the making or purchase of mortgage loans to sponsors of residential housing for the construction, rehabilitation or improvement of residential housing; ~~provided, however, that the housing.~~ The total amount of bonds, bond anticipation notes, and construction loan notes outstanding at any one time shall not exceed one billion five hundred million dollars (\$1,500,000,000) excluding therefrom any bond anticipation notes for the payment of which bonds shall have been issued. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the Agency. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and under such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 43 years from their date or dates, as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the filing with the Local Government Commission of North Carolina of a resolution of the Agency requesting that its bonds and notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as ~~said the~~ Commission shall determine to be for the best interest of the Agency and best effectuate the purposes of this Chapter ~~provided that such sale shall be~~ Chapter, as long as the sale is approved by the Agency.

The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such

restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

Prior to the preparation of definitive bonds, the Agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

Bonds or notes may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same."

Section 2. G.S. 122A-11 reads as rewritten:

"§ 122A-11. *Trust funds.*

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide.

Any moneys received pursuant to the authority of this Chapter and any other moneys available to the Agency for investment may be invested:

- (1) As provided in G.S. 159-30, except that for purposes of G.S. 159-30(b) the Agency may deposit moneys at interest in banks or trust companies outside as well as in this State, provided any such as long as any moneys at deposit outside this State are collateralized to the same extent and manner as if at deposit in this State;
- (2) In evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States government, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state in the capacity of custodian;
- (3) In obligations which are collateralized by mortgage pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association;

- (4) In a trust certificate or similar instrument evidencing an equity investment in a trust or other similar arrangement which is formed for the purpose of issuing obligations which are collateralized by mortgage pass-through or participation certificates guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; and
- (5) In repurchase agreements with respect to either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States government if ~~all of the following conditions are met: entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if~~
- a. The repurchase agreement is entered into with an institution whose ability to pay its unsecured long-term obligations (including, if the institution is an insurance company, its claims paying ability) is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the term of the repurchase agreement is for a period of one year or less, however, the repurchase agreement may be entered into with an institution that does not have such a long-term rating if its ability to pay its unsecured short-term obligations is rated in one of the two highest ratings categories by a nationally recognized securities rating agency. If the institution with which the agreement is to be entered does not meet the ratings requirement of this subparagraph, the repurchase agreement may nevertheless be entered into with the institution if the obligations of the institution under the repurchase agreement are fully guaranteed by another institution that does meet the ratings requirement of this subparagraph.
- b. The repurchase agreement provides that it shall be terminated, without penalty, if the institution with which the repurchase agreement is entered or by whom the institution's obligations are guaranteed fails to maintain (i) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's long-term obligations, a rating of its long-term obligations in one of the three highest ratings categories by at least one nationally recognized securities rating agency, or (ii) in the event that the repurchase agreement was entered into in reliance upon the rating of the institution's short-term obligations, a rating of its short-term obligations in one of the two highest ratings categories by at least one nationally recognized securities rating agency. The repurchase agreement does not have to be terminated, however, if a new

guarantor meeting the rating requirement set forth in subparagraph a. as the requirement necessary for the Agency to enter the repurchase agreement agrees to fully guarantee the obligations of the institution under the repurchase agreement.

- a. c. such The obligations that are subject to such the repurchase agreement are delivered (in physical or in book entry form) to the Agency, or any financial institution serving either as trustee for obligations issued by the Agency or as fiscal agent for the Agency or the State Treasurer or are supported by a safekeeping receipt issued by a depository satisfactory to the Agency, provided that such Agency. The repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price; price. The financial institution serving either as trustee or as fiscal agent for the Agency holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement.
- b. d. a A valid and perfected first security interest in the obligations which are the subject of such the repurchase agreement has been granted to the Agency or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the agency have been established for the benefit of the Agency or its assignee; assignee.
- c. e. such The securities are free and clear of any adverse third party claims; and third-party claims.
- d. f. such The repurchase agreement is in a form satisfactory to the Agency."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of April, 1997.

Became law upon approval of the Governor at 3:00 p.m. on the 3rd day of April, 1997.

S.B. 79

CHAPTER 14

AN ACT TO REPEAL MORE ANTIQUATED LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 11-11 reads as rewritten:

"§ 11-11. Oaths of sundry persons; forms.

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

Administrator

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

Attorney at Law

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

Attorney General, State District Attorneys and County

Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Book Debt Oath

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself; and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

Book Debt Oath for Administrator

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

Clerk of the Supreme Court

I,, do solemnly swear that I will discharge the duties of the office of clerk of the Supreme Court without prejudice, affection, favor, or partiality, according to law and to the best of my skill and ability, so help me, God.

Clerk of the Superior Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the State; and I do further swear that I will

execute the office of clerk of the superior court for the county of
 . . . without prejudice, favor, affection or partiality, to the best of my skill
 and ability; so help me, God.

Commissioners Allotting a Year's Provisions

You and each of you swear (or affirm) that you will lay off and allot to
 the petitioner a year's provisions for herself and family, according to law,
 and with your best skill and ability; so help you, God.

Commissioners Dividing and Allotting Real Estate

You and each of you swear (or affirm) that, in the partition of the real
 estate now about to be made by you, you will do equal and impartial justice
 among the several claimants, according to their several rights, and agreeably
 to law; so help you, God.

Entry-Taker

~~I, A. B., do solemnly swear (or affirm) that I will well and impartially
 discharge the several duties of the office of entry-taker for the county of . . .
 . . . according to law; so help me, God.~~

Executor

You swear (or affirm) that you believe this writing to be and contain the
 last will and testament of A. B., deceased; and that you will well and truly
 execute the same by first paying his debts and then his legacies, as far as the
 said estate shall extend or the law shall charge you; and that you will well
 and faithfully execute the office of an executor, agreeably to the trust and
 confidence reposed in you, and according to law; so help you, God.

Grand Jury--Foreman of

You, as foreman of this grand inquest for the body of this county, shall
 diligently inquire and true presentment make of all such matters and things
 as shall be given you in charge; the State's counsel, your fellows' and your
 own you shall keep secret; you shall present no one for envy, hatred or
 malice; neither shall you leave anyone unrepresented for fear, favor or
 affection, reward or the hope of reward; but you shall present all things
 truly, as they come to your knowledge, according to the best of your
 understanding; so help you, God.

Grand Jurors

The same oath which your foreman hath taken on his part, you and each
 of you shall well and truly observe and keep on your part; so help you,
 God.

Grand Jury--Officer of

You swear (or affirm) that you will faithfully carry all papers sent from
 the court to the grand jury, or from the grand jury to the court, without
 alteration or erasement, and without disclosing the contents thereof; so help
 you, God.

Jury--Officer of

You swear (or affirm) that you will keep every person sworn on this jury
 in some private and convenient place when in your charge. You shall not
 suffer any person to speak to them, neither shall you speak to them yourself,
 unless it be to ask them whether they are agreed in their verdict, but with
 leave of the court; so help you, God.

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God.

Justice, Judge, or Magistrate of the General Court of Justice

I,, do solemnly swear (affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of of the Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of, in all things according to law; so help me, God.

Secretary of State

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of Secretary of State of the State of North Carolina, during my continuance in office, according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of, according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of, in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Criminal Action

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the State and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in Civil Cases

You swear (or affirm) that the evidence you shall give to the court and jury in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness to Prove a Will

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

Witness before a Legislative Committee or Commission

You swear (or affirm) that the testimony you shall give to the committee (or commission) shall be the truth, the whole truth, and nothing but the truth; so help you, God.

General Oath

Any officer of the State or of any county or township, the term of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of according to the best of my skill and ability, according to law; so help me, God."

Section 2. G.S. 58-76-5 reads as rewritten:

"§ 58-76-5. *Liability and right of action on official bonds.*

Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, ~~entry taker~~, surveyor, sheriff, coroner, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may

be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office."

Section 3. G.S. 147-12(11) reads as rewritten:

"(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. ~~20-16.2(h)~~, 20-4.01, are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard remove the offending vehicles or other causes of the blockade from the emergency area."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of March, 1997.

Became law upon approval of the Governor at 3:00 p.m. on the 3rd day of April, 1997.

H.B. 139

CHAPTER 15

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT AND OTHER STATES ARE REQUIRED TO REGISTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6(2) reads as rewritten:

"(2) 'Penal institution' ~~means a~~ means:

- a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction, or a county jail. Correction;
- b. A detention facility operated under the jurisdiction of another state or the federal government; or
- c. A detention facility operated by a local government in this State or another state."

Section 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

- a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second

degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).

- b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.
- c. A final conviction in a federal jurisdiction of an offense which is substantially similar to an offense set forth in paragraph a. of this subdivision."

Section 3. This act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

In the General Assembly read three times and ratified this the 25th day of March, 1997.

Became law upon approval of the Governor at 3:00 p.m. on the 3rd day of April, 1997.

H.B. 248

CHAPTER 16

AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES AND MOTORCYCLE LEARNERS' PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"§ 20-11. ~~Application of minors. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.~~

~~(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.~~

~~The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.~~

~~(b) The Division may issue a limited learner's permit to a minor who is at least 15 years old but is less than 16 years old and who otherwise meets the requirements of this section. An application for a limited learner's permit must be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A limited learner's permit is valid for a period of 18 months. The fee for a limited learner's permit is ten dollars (\$10.00). In the event a minor who holds a limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled. A driver who holds a limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.~~

~~(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid motor vehicle driver's license from his prior state of residence but has not completed a course in driver education which meets the requirements of this State, grant to such minor a temporary driver's permit under such terms and conditions as shall be deemed necessary by the Division to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses necessary for license in North Carolina. Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a driver's license.~~

(a) Process. -- Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

- (1) Level 1. -- Driving with a limited learner's permit.
- (2) Level 2. -- Driving with a limited provisional license.
- (3) Level 3. -- Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

(b) Level 1. -- A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

- (1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.
- (2) Passes a written test administered by the Division.

(c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

- (1) The permit holder must be in possession of the permit.
 - (2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.
 - (3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.
 - (4) After the first six months after issuance, the permit holder may drive at any time.
 - (5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.
- (d) Level 2. -- A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:
- (1) Has held a limited learner's permit issued by the Division for at least 12 months.
 - (2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.
 - (3) Passes a road test administered by the Division.
- (e) Level 2 Restrictions. -- A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:
- (1) The license holder must be in possession of the license.
 - (2) The license holder may drive without supervision in any of the following circumstances:
 - a. From 5:00 a.m. to 9:00 p.m.
 - b. When driving to or from work.
 - c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.
 - (3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.
 - (4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.
- (f) Level 3. -- A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:
- (1) Has held a limited provisional license issued by the Division for at least six months.
 - (2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

- (1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.
- (2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.
- (3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be the applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division.

(j) Duration and Fee. -- A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars (\$10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. -- A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian

signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application. A supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Violations. -- It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. -- The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies."

Section 2. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall must have such a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is ~~(1)~~ (i) under 16 years of age and ~~(2)~~ (ii) not required to be restrained in accordance with G.S. 20-137.1, shall must have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with ~~G.S. 20-137.1~~ shall G.S. 20-11 and G.S. 20-137.1 must be secured as required by that section. those sections."

Section 3. G.S. 20-88.1(a) reads as rewritten:

"(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. The

The driver education program established pursuant to this section shall must include instructions the following:

- (1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the 'international symbol of accessibility' and

other symbols and devices as provided in Article 2A of this Chapter. ~~In addition, this program shall include at~~

- (2) At least six hours of instruction on the offense of driving while impaired and related subjects.
- (3) At least six hours of actual driving experience. To the extent practicable, this experience may include at least one hour of instruction on the techniques of defensive driving."

Section 4. G.S. 20-322(b) reads as rewritten:

"(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. A driver education course offered to prepare an individual for a limited learner's permit or another provisional license must meet the requirements set in G.S. 20-88.1 for the program of driver education offered in the public schools."

Section 5. G.S. 20-7(l) reads as rewritten:

"(l) ~~Learner's Permit. -- Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain a drivers license under this Article~~ A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ten dollars (\$10.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder."

Section 6. G.S. 20-12 is repealed.

Section 7. G.S. 20-12.1 reads as rewritten:

"§ 20-12.1. Impaired supervision or instruction.

(a) ~~It is unlawful for any person to accompany another person driving a motor vehicle, in accordance with G.S. 20-11, or instruct another person driving a motor vehicle, in accordance with G.S. 20-7(l-1) and (m) or G.S. 20-12; a person to serve as a supervising driver under G.S. 20-7(l) or G.S. 20-11 or as an approved instructor under G.S. 20-7(m) in any of the following circumstances:~~

- (1) ~~While the person accompanying or instructing is under the influence of an impairing substance; or substance.~~
- (2) ~~After having consumed sufficient alcohol that he has, to have, at any relevant time after the driving, an alcohol concentration of 0.08 or more.~~
- (b) ~~An offense under this section is an implied-consent offense under G.S. 20-16.2."~~

Section 8. G.S. 20-7(a1) reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have a motorcycle learner's permit, a full provisional license and a motorcycle endorsement, or a regular drivers license and a motorcycle endorsement. Subsection (a2) of this section sets the requirements for a motorcycle learner's permit. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 9. G.S. 20-7 is amended by adding a new subsection to read:

"(a2) Motorcycle Learner's Permit. -- The following persons are eligible for a motorcycle learner's permit:

- (1) A person who is at least 16 years old but less than 18 years old and has a limited provisional license or a full provisional license issued by the Division.
- (2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant must pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The holder of a motorcycle learner's permit who has a limited provisional license may drive the motorcycle only at a time when the license holder could drive a motor vehicle without supervision under G.S. 20-11. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

Section 10. This act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Section 11. This act becomes effective December 1, 1997, if the General Assembly appropriates the necessary funds from the Highway Fund to the Department of Transportation, Division of Motor Vehicles, to administer the provisional license program. Sections 1 through 7 of this act do not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of this act, who holds a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee and holds a valid North Carolina drivers license issued before the effective date of this act.

In the General Assembly read three times and ratified this the 7th day of April, 1997.

Became law upon approval of the Governor at 12:10 p.m. on the 9th day of April, 1997.

Whereas, former G.S. 105-203 (repealed) imposed an intangibles tax on shares of stock and provided a taxable percentage deduction reducing a taxpayer's liability for this tax in proportion to the issuing company's income taxed in North Carolina; and

Whereas, the United States Supreme Court in "*Fulton Corporation v. Faulkner*" held the taxable percentage deduction to discriminate against interstate commerce in violation of the United States Constitution and remanded the case to the Supreme Court of North Carolina to address the remedy appropriate to redress the constitutional violation; and

Whereas, the Supreme Court of North Carolina in "*Fulton Corporation v. Faulkner*" (on remand) held that the taxable percentage deduction was severable from former G.S. 105-203, thereby exposing all taxpayers to liability for taxation under G.S. 105-203, including those who were not required to pay the tax on shares of stock, in whole or in part, by virtue of the taxable percentage deduction; and

Whereas, the Secretary of Revenue has been advised by the Attorney General that the Supreme Court of North Carolina's decision requires assessment and collection of intangibles tax from taxpayers who received the benefit of the taxable percentage deductions in former G.S. 105-203, unless the General Assembly directs otherwise; and

Whereas, the Supreme Court of North Carolina provided in "*Fulton Corporation v. Faulkner*" (on remand) that "[w]hether to enforce the tax as to all shareholders is within the province of the General Assembly"; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Revenue shall take no action to assess or collect intangibles tax from any taxpayer for liability arising solely from the taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for one or more of the tax years from 1990 through 1994.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of April, 1997.

Became law upon approval of the Governor at 9:50 a.m. on the 10th day of April, 1997.

S.B. 70

CHAPTER 18

AN ACT TO REPEAL OBSOLETE OR REDUNDANT SCHOOL LAWS, TO TRANSFER THE STATUTES THAT ESTABLISH THE STATE SCHOOLS FOR HEARING- AND SIGHT-IMPAIRED STUDENTS FROM CHAPTER 115C TO CHAPTER 143B OF THE GENERAL STATUTES, TO STREAMLINE THE REPORTS OF THE STATE BOARD OF EDUCATION TO THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SCHOOL IMPROVEMENT AND ACCOUNTABILITY REPORT.

Section 1. G.S. 115C-15 is repealed.
REPORT ON CLASS SIZE WAIVERS.

Section 2. G.S. 115C-21.1 is repealed.
ALCOHOL AND DRUG DEFENSE PROGRAM.

Section 3. G.S. 115C-22 is repealed.
OBSERVANCE OF SPECIAL DAYS.

Section 4. G.S. 115C-83 is repealed.
EXPENDITURE OF FUNDS.

Section 5. G.S. 115C-102.8 is repealed.
REGIONAL EDUCATIONAL TRAINING CENTERS.

Section 6. Part 4 of Article 9 of Chapter 115C of the General Statutes is repealed.

DEPARTMENTAL REQUESTS.

Section 7. G.S. 115C-144 is repealed.
PROJECT GENESIS PROGRAM.

Section 8. Part 6 of Article 16 of Chapter 115C of the General Statutes is repealed.

COLLEGES ASSIST TEACHERS IN CERTIFICATION.

Section 9. G.S. 115C-298 is repealed.
PERSONNEL ADMINISTRATION COMMISSION.

Section 10. Part 4 of Article 22 of Chapter 115C of the General Statutes is repealed.

STATE POLICY.

Section 11. G.S. 115C-472 is repealed.
STATE SCHOOLS OF HEARING-IMPAIRED CHILDREN.

Section 12. Part 7 of Article 9 of Chapter 115C of the General Statutes, G.S. 115C-123 through G.S. 115C-126.1, is recodified as Part 30 of Article 3 of Chapter 143B of the General Statutes, G.S. 143B-216.40 through G.S. 143B-216.44.

GOVERNOR MOREHEAD SCHOOL.

Section 13. (a) Part 8 of Article 9 of Chapter 115C of the General Statutes, G.S. 115C-127 through G.S. 115C-133, is recodified as Part 9A of Article 3 of Chapter 143B of the General Statutes, G.S. 143B-164.10 and G.S. 143B-164.13 through G.S. 143B-164.17.

(b) G.S. 143B-176.1 is recodified as G.S. 143B-164.11 in Part 9A of Article 3 of Chapter 143B of the General Statutes.

(c) G.S. 143B-176.2 is recodified as G.S. 143B-164.12 in Part 9A of Article 3 of Chapter 143B of the General Statutes.

(d) The remainder of Part 12A of Article 3 of Chapter 143B of the General Statutes is repealed.

CENTRAL ORPHANAGE.

Section 14. Part 9 of Article 9 of Chapter 115C of the General Statutes is repealed. This repeal shall not impair the continuing existence of any corporation established under Chapter 47, Private Laws of 1887, and continued under Part 9 of Article 9 of Chapter 115C of the General Statutes.

STATE BOARD OF EDUCATION REPORTS.

Section 15. (a) G.S. 115C-12 is amended by adding the following new subdivision to read:

"(25) Duty to Report to Joint Legislative Education Oversight Committee. -- Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, beginning October 15, 1997, and annually thereafter, the State Board shall submit reports to that Committee regarding the continued implementation of Chapter 716 of the 1995 Session Laws, 1996 Regular Session. Each report shall include information regarding the composition and activity of assistance teams, schools that received incentive awards, schools identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility."

(b) Article 12H of Chapter 120 of the General Statutes is amended by adding the following new section:

"§ 120-70.83. Additional powers.

The Joint Legislative Education Oversight Committee, while in discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120.19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly."

(c) G.S. 115C-12(9) reads as rewritten:

"(9) Miscellaneous Powers and Duties. -- All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

- a. To certify and regulate the grade and salary of teachers and other school employees.
- b. To adopt and supply textbooks.
- c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program. The Board shall report to the Joint Legislative Education Oversight Committee and to the General Assembly by December 31,

~~1991, and by February 1 of each subsequent year on each local board's progress in implementing the Basic Education Program, including the use of State and local funds for the Basic Education Program.~~

The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.

The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.

- c1. To issue an annual 'report card' for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.
- c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1.
- c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.
- c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.
- d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
- e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings

throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters."

(d) G.S. 115C-12(16) reads as rewritten:

- "(16) Power with Regard to Salary Schedules. -- The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.
- a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.
 - b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

~~The State Board of Education shall report to the General Assembly, prior to March 31, 1995, and March 31, 1996, on the implementation of this sub-subdivision.~~

- c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades

included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations."

(e) Effective July 1, 1999, G.S. 115C-12(24) reads as rewritten:

"(24) Duty to Develop Guidelines for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. -- The State Board of Education shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. ~~The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee, beginning in December 1996, on the results of this evaluation."~~

(f) G.S. 115C-81(a) reads as rewritten:

"(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association. ~~The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.~~

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the intent of the General Assembly that until the Basic Education Program is fully funded, the implementation of the Basic Education Program shall be the focus of State educational funding. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1995.

It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement."

(g) Effective July 1, 1999, Section 8.5(a) of Chapter 716 of the 1995 Session Laws, 1996 Regular Session, is repealed.

(h) Section 29(b) of Chapter 716 of the 1995 Session Laws, 1996 Regular Session, is repealed.

(i) Effective July 1, 1999, G.S. 115C-238.29I reads as rewritten:

"§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter School Advisory Committee.

(a) The State Board of Education shall distribute information announcing the availability of the charter school process described in this Part to each local school administrative unit and public postsecondary educational institution and, through press releases, to each major newspaper in the State.

~~(b) The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations the following information:~~

~~(1) The current and projected impact of charter schools on the delivery of services by the public schools;~~

~~(2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation; and~~

~~(3) Best practices resulting from charter school operations.~~

~~The State Board of Education shall base its report in part upon the annual reports submitted by the charter schools under G.S. 115C-238.29F(f)(3). To the extent possible, the State Board of Education shall present the information in disaggregated form relative to the race, gender, grade level, and economic condition of the students.~~

~~(c) The State Board of Education shall review the educational effectiveness of the charter school approach authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located and, not later than January 1, 1999, shall report to the Joint Legislative Education Oversight Committee with recommendations to modify, expand, or terminate that approach. Analysis of the reports submitted under subsection (b) of this section shall be the predominant factor in determining whether the number of charter schools shall be increased and the conditions under which any increase or continued operation shall be allowed. If the analysis indicates demonstrable, substantial success, the General Assembly shall consider expanding the number of charter schools that may be established, located.~~

(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a contract, (v) make recommendations concerning grievances between

a charter school and its chartering entity, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board."

(j) G.S. 115C-238.33(b) is repealed.

(k) G.S. 115C-102.7 reads as rewritten:

"§ 115C-102.7. *Monitoring and evaluation of State and local school system technology plans; reports.*

(a) The Commission shall monitor and evaluate the development and implementation of the State and local school system technology plans. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology. ~~The Commission shall report in October of each year to the State Board of Education, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Education Oversight Committee on the development and the implementation of State and local school system technology plans.~~

~~(a1) The Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee may meet jointly to consider reports from the Commission on School Technology and they may appoint subcommittees to jointly consider the reports.~~

(b) The Commission shall provide notice of meetings, copies of minutes, and periodic briefings to the chair of the Information Resources Management Commission and the chair of the Technical Committee of the Information Resources Management Commission."

(l) G.S. 115C-415 is repealed.

(m) G.S. 115C-472.5(d) reads as rewritten:

"(d) The Department of Public Instruction shall report to the Information Resource Management ~~Commission, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the State Government Performance Audit Committee~~ Commission on an annual basis on all loans made from the fund."

EFFECTIVE DATE.

Section 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of April, 1997.

Became law upon approval of the Governor at 2:45 p.m. on the 11th day of April, 1997.

S.B. 95

CHAPTER 19

AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-16 reads as rewritten:

"§ 10A-16. *Acts of notaries public in certain instances validated.*

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or

recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is erroneously stated, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~October 1, 1991, December 31, 1996.~~

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of April, 1997.

Became law upon approval of the Governor at 2:45 p.m. on the 11th day of April, 1997.

H.B. 78

CHAPTER 20

AN ACT TO CLARIFY WHO IS EXEMPT FROM THE PUBLIC SCHOOL ADMINISTRATOR EXAM.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1998, G.S. 115C-290.8 reads as rewritten:

"§ 115C-290.8. (Effective January 1, 1998) *Exemptions from requirements.*

The requirements of this Article do not apply to a person who, at any time during the five years preceding January 1, 1998, (i) completed an administrative internship as part of an approved graduate program in school administration and obtained an active State administrator/supervisor certificate, ~~or~~ (ii) was engaged in school administration while in possession of an active State administrator/supervisor ~~certificate~~, certificate, or (iii) was employed in a North Carolina college or university as an instructor while in possession of an active State administrator/supervisor certificate and whose major responsibilities included the preparation or supervision of individuals enrolled in a public school administration program that meets the public school administrator program approval standards set by the State Board. A person who is exempt from the requirements of this Article but applies to the Standards Board under this Article shall be subject to the Article."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of April, 1997.

Became law upon approval of the Governor at 2:45 p.m. on the 11th day of April, 1997.

H.B. 8

CHAPTER 21

AN ACT TO REPEAL RESTRICTIONS ON HUNTING ON THE LAND OF ANOTHER IN MACON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Sections 2 and 3 of Chapter 754 of the 1995 Session Laws are repealed.

Section 2. This act applies only to Macon County.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

Became law on the date it was ratified.

H.B. 105

CHAPTER 22

AN ACT TO ENABLE THE COUNTY OF JACKSON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Jackson County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of six members, who shall be residents of Jackson County and who shall be appointed to staggered terms of six years by the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining two initial appointments to the Airport Authority shall be for six years. When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Jackson County Board of Commissioners who shall select one from that list to fill the unexpired term of the vacant office. Each member shall take and subscribe before the Clerk of Superior Court of Jackson County an oath of office and file the same with the Jackson County Board of Commissioners. Membership on the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Jackson County Board of Commissioners from time to time determines. Members shall be allowed and paid their actual traveling expenses incurred in transacting the business

and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4. (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the county and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the County of Jackson.
- (2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.
- (3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.
- (4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the County of Jackson.
- (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.
- (6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Jackson County Board of Commissioners.
- (7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.
- (8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.
- (9) To purchase any of its outstanding bonds or notes.
- (10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food

and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

- (11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
- (12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.
- (13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.
- (14) To have a corporate seal, which may be altered at will.

(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the county, by agreement with the county, and the county may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the county.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days notice to the surviving spouse or next of kin of the deceased buried there, or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Jackson County. If no surviving

spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Jackson County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Jackson County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

Section 8. The Airport Authority shall make an annual report to the Jackson County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Jackson County, or any subdivision thereof, or to impose any obligation on Jackson County, or any of their subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Jackson County Board of Commissioners may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Jackson County to control, regulate, and provide for the development of aviation in Jackson County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Jackson County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Jackson County Board of Commissioners. The Jackson County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Jackson County Board of Commissioners.

Section 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote.

The Airport Authority shall meet at the places and times designated by the chair.

Section 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the County of Jackson and on the sale of that property, the proceeds shall vest totally in the County of Jackson.

Section 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Jackson County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Jackson County Airport Authority.

Section 17. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 18. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

Became law on the date it was ratified.

H.B. 295

CHAPTER 23

AN ACT TO EXEMPT MOST INTANGIBLE PERSONAL PROPERTY FROM PROPERTY TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275(31) reads as rewritten:

~~"(31) Money, whether on hand or on deposit at a bank, a credit union, a savings and loan association, or an insurance company. Intangible personal property other than leasehold interests in exempted real property. This subdivision does not affect the taxation of software not otherwise excluded by subdivision (40) of this section."~~

Section 2. G.S. 105-276 reads as rewritten:

~~"§ 105-276. Taxation of intangible personal property.~~

~~Intangible personal property that is not excluded from taxation under G.S. 105-275 is subject to this Subchapter. The exclusion of a class of intangible personal property from taxation under G.S. 105-275 does not affect the appraisal or assessment of real property and tangible personal property."~~

Section 3. G.S. 105-275(31a), (31b), (31c), and (31d) are repealed.

Section 4. G.S. 105-282.1(a)(2) reads as rewritten:

~~"(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (31a), (31b), (31c), (31d),~~

(32a), (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property."

Section 5. G.S. 105-294(b)(3) reads as rewritten:

"(3) Within two years of the date of appointment, achieve a passing score in courses of instruction approved by the Department of Revenue covering the following topics:

- a. The laws of North Carolina governing the listing, appraisal, and assessment of property for taxation;
- b. The theory and practice of estimating the fair market value of real property for ad valorem tax purposes;
- c. The theory and practice of estimating the fair market value of ~~tangible and intangible~~ personal property for ad valorem tax purposes; and
- d. Property assessment administration."

Section 6. G.S. 105-333(3) reads as rewritten:

"(3) Distributable system property. -- All real property and ~~tangible and intangible~~ personal property owned or used by a railroad company other than nondistributable system property."

Section 7. G.S. 105-333(17) reads as rewritten:

"(17) System property. -- The real property and ~~tangible and intangible~~ personal property used by a public service company in its public service activities. The term also includes public service company property under construction on the day as of which property is assessed which when completed will be used by the owner in its public service activities."

Section 8. G.S. 105-275.2 is amended by adding a new subsection to read:

"(c) Reduction. -- Each year, on or before July 15, the governing body of each county and each municipality shall notify the Secretary of the amount of taxes it collected in the preceding fiscal year from taxes on intangible personal property discovered on or after January 1, 1997, for taxable years beginning on or after July 1, 1991. The Secretary shall reduce the amount allocated to each county and municipality for distribution the following August by the amount the county or municipality reports pursuant to this subsection. If the Secretary discovers that a county or municipality failed to report any taxes as required by this subsection, the Secretary shall reduce the county or municipality's next distribution under this section by ten percent (10%)."

Section 9. G.S. 105-275(40) reads as rewritten:

"(40) Computer software and any documentation related to the computer software. As used in this subdivision, the term 'computer software' means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

- a. It is embedded software. 'Embedded software' means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.
- b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter.

The provisions of the exclusion established by this subdivision are not severable. If any provision of this subdivision or its application is held invalid, the entire subdivision is repealed."

Section 10. Section 8 of this act becomes effective July 1, 1997, and expires September 1, 2002. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1997.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

Became law upon approval of the Governor at 3:00 p.m. on the 15th day of April, 1997.

S.B. 59

CHAPTER 24

AN ACT TO ALLOW GATES AND ONSLOW COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) **Acquisition by County.** -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the

board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of April, 1997.

Became law on the date it was ratified.

S.B. 199

CHAPTER 25

AN ACT TO ALLOW TOWN MANAGERS OF SMALL TOWNS TO HOLD CONCURRENTLY APPOINTIVE AND MUNICIPAL ELECTIVE OFFICES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-147 reads as rewritten:

"§ 160A-147. *Appointment of city manager; dual office holding.*

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of his the manager's executive and administrative qualifications. He The manager need not be a resident of the city or State at the time of his appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education ~~which that~~ is elected on a non-partisan basis if the following criteria are met:

- (1) The population of the city by which the city manager is employed does not exceed 10,000;
- (2) The city is located in two counties; and
- (3) The population of the county in which the city manager resides does not exceed 40,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

- (1) The population of the city by which the city manager is employed does not exceed 3,000.
- (2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, The population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this subsection, section, the city manager may complete the term on the county board of education which he of elected office that the city manager is then serving."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of April, 1997.

Became law upon approval of the Governor at 12:10 p.m. on the 17th day of April, 1997.

H.B. 95

CHAPTER 26

AN ACT TO ESTABLISH A THREE-YEAR CYCLE FOR BUILDING CODE AMENDMENTS BEGINNING IN 1999 AND TO MAKE RELATED CHANGES CONCERNING THE ADMINISTRATION AND ENFORCEMENT OF THE STATE BUILDING CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(a) reads as rewritten:

"(a) Preparation and Adoption. -- The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Council shall not take final action on a proposed Code change that has a substantial economic

impact until at least 60 days after the fiscal note has been prepared. The change can become effective only in accordance with G.S. 143-138(d)."

Section 2. G.S. 143-138(c) reads as rewritten:

"(c) Standards to Be Followed in Adopting the Code. -- All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally reasonably to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the practice. The Council may use as guidance, but is not required to adopt, the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code and Fire Prevention Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety."

Section 3. G.S. 143-138(d) reads as rewritten:

"(d) Amendments of the Code. -- The Building Code Council may from time to time revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. Code revisions and amendments adopted by the Building Code Council on or after September 1, 1997, but prior to July 1, 1998, shall become effective January 1, 1999. Code revisions and amendments adopted by the Building Code Council on or after July 1, 1998, but prior to July 1, 2001, shall become effective January 1, 2002. All future revisions and amendments shall be adopted prior to July 1 every three years after July 1, 2001, to become effective the first day of January of the following year. A revision or amendment may be made effective on an earlier date if determined by the Building Code Council to be necessary to address an imminent threat to the public's health, safety, or welfare.

Handbooks providing explanatory material on Code provisions shall be provided no later than January 1, 2000, and shall be updated with each triennial revision of the Code or, in the discretion of the Council, more frequently. The Department may charge a reasonable fee for the handbooks."

Section 4. G.S. 143-137 reads as rewritten:

"§ 143-137. *Organization of Council; rules; meetings; staff; fiscal affairs.*

(a) First Meeting; Organization; Rules. -- Within 30 days after its appointment, the Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules. The Council shall adopt such rules not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such committees as the work of the Council may require. In addition, the chairman shall establish and appoint ad hoc code revision committees to consider and prepare revisions and amendments to the Code volumes. Each ad hoc committee shall consist of members of the Council, licensed contractors, and design professionals most affected by the Code volume for which the ad hoc committee is responsible, and members of the public. The subcommittees shall meet upon the call of their respective chairs and shall report their recommendations to the Council.

(b) Meetings. -- The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Council. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Seven members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff. -- Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. Such staff shall have the duties of

- (1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council, and making these records available for public inspection at all reasonable times;
- (2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council. -- All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council."

Section 5. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt ~~a building code or building rules and regulations governing construction~~ or a fire prevention code within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be

as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. ~~While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct.~~ In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

Section 6. Article 9 of Chapter 143 of the General Statutes is amended by adding the following new section:

"§ 143-138.1. Introduction and instruction of the North Carolina Building Code.

Prior to the effective date of Code changes pursuant to G.S. 143-138, the State Building Code Council and Department of Insurance shall provide for instructional classes for the various trades affected by the Code. The Department of Insurance shall develop the curriculum for each class but shall consult the affected licensing boards and trade organizations. The curriculum shall include explanations of the rationale and need for each Code amendment or revision. Classes may also be conducted by, on behalf of, or in cooperation with licensing boards, trade associations, and professional societies. The Department of Insurance may charge fees sufficient to recover the costs it incurs under this section. The Council shall ensure that courses are accessible to persons throughout the State."

Section 7. G.S. 143-141(b) reads as rewritten:

"(b) Interpretations of the Code. -- The Building Code Council shall have the duty, in hearing appeals, to give interpretations of such provisions

of the Building Code as shall be pertinent to the matter at issue. Where the Council finds that an enforcement agency was in error in its interpretation of the Code, it shall remand the case to the agency with instructions to take such action as it directs. Interpretations by the Council and local enforcement officials shall be based on a reasonable construction of the Code provisions."

Section 8. Sections 3 and 6 of this act become effective September 1, 1997. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of April, 1997.

Became law upon approval of the Governor at 12:10 p.m. on the 17th day of April, 1997.

S.B. 126

CHAPTER 27

AN ACT TO REQUIRE THAT AN APPLICANT FOR A PERMIT UNDER THE STATUTES GOVERNING SOLID WASTE MANAGEMENT BE FINANCIALLY QUALIFIED AND DEMONSTRATE SUBSTANTIAL COMPLIANCE WITH ENVIRONMENTAL LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 is amended by recodifying subdivision (1) as subdivision (1a), subdivision (1a) as subdivision (1b), subdivision (1b) as subdivision (1c), subdivision (41a) as subdivision (41b), and by adding three new subdivisions to read:

- "(1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (21a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (41a) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition)."

Section 2. G.S. 130A-294 is amended by adding two new subsections to read:

"(b2) The Department may require an applicant for a permit under this Article to satisfy the Department that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent:

- (1) Is financially qualified to carry out the activity for which the permit is required.
- (2) Has substantially complied with the requirements applicable to any solid waste management activity in which the applicant has previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

(b3) An applicant for a permit under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Article, a

permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that the permittee continues to be financially qualified."

Section 3. This act is effective when it becomes law and applies to any application for a permit submitted on or after the date on which this act becomes law, provided that an applicant for the renewal or modification of a permit for an existing facility or for a permit for the expansion of an existing facility who satisfies G.S. 130A-309.06(b) shall not be required to satisfy G.S. 130A-294(b2)(2), as enacted by Section 2 of this act.

In the General Assembly read three times and ratified this the 10th day of April, 1997.

Became law upon approval of the Governor at 12:11 p.m. on the 17th day of April, 1997.

S.B. 150

CHAPTER 28

AN ACT TO REDUCE THE FREQUENCY OF THE REPORT ON THE INACTIVE HAZARDOUS SUBSTANCE RESPONSE ACT OF 1987 FROM ANNUALLY TO EVERY TWO YEARS AND TO CLARIFY THE PUBLIC COMMENT PERIOD ON REMEDIAL ACTION PLANS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.10 reads as rewritten:

"§ 130A-310.10. *Annual reports.*

(a) The Secretary shall present ~~an annual~~ a report on inactive hazardous sites to ~~the General Assembly and the Environmental Review Commission~~ which Commission. The report shall include at least the following: least:

- (1) The Inactive Hazardous Waste Sites Priority List;
- (2) A list of remedial action plans requiring State funding through the Inactive Hazardous Sites Cleanup Fund;
- (3) A comprehensive budget to implement these remedial action plans and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of said plans;
- (4) A prioritized list of sites that are eligible for remedial action under CERCLA/SARA together with recommended remedial action plans and a comprehensive budget to implement such plans. The budget for implementing a remedial action plan under CERCLA/SARA shall include a statement as to any appropriation that may be necessary to pay the State's share of such plan;
- (5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental approval;
- (6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said plans;
- (7) A list of sites which pose an imminent hazard;

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup Fund; and

(9) Any other information requested by the General Assembly or the Environmental Review Commission.

(b) The annual reports report required by this section shall be made by the Secretary on 15 February of each year beginning 15 February 1990, or before 1 November of even-numbered years."

Section 2. G.S. 130A-310.4(e) reads as rewritten:

"(e) At least 45 days from the latest date on which notice is provided pursuant to subsection (c) (1) of this section shall be allowed for the receipt of written comment on the proposed remedial action plan prior to its approval. If a public hearing is held pursuant to subsection (f) of this section, at least 20 days will be allowed for receipt of written comment following the hearing prior to the approval of the remedial action plan."

Section 3. This act is effective when it becomes law. The Secretary of Environment, Health, and Natural Resources shall make the first report under G.S. 130A-310.10, as amended by Section 1 of this act, on or before 1 November 1998.

In the General Assembly read three times and ratified this the 10th day of April, 1997.

Became law upon approval of the Governor at 12:12 p.m. on the 17th day of April, 1997.

S.B. 260

CHAPTER 29

AN ACT TO MODIFY THE PENALTY SCHEDULE FOR VIOLATIONS OF THE VEHICLE EMISSION INSPECTION PROGRAM, TO CLARIFY THE PROCEDURE FOR IMPOSING THE PENALTIES, AND TO MAKE OTHER CHANGES TO THE VEHICLE EMISSION INSPECTION LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-183.4(b) reads as rewritten:

"(b) Station Qualifications. -- An applicant for a license as a safety inspection station must meet all of the following requirements:

(1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection. A place of business designated in a station license that has been suspended or revoked cannot be the designated place for any other license applicant during the period of the suspension or revocation, unless the Division finds that operation of the place of business as an inspection station during this period by the license applicant would not defeat the purpose of the suspension or revocation because the license applicant has no connection with the person whose license was suspended or revoked or because of another reason. A finding made by the Division under this subdivision must be set

out in a written statement that includes the finding and the reason for the finding.

- (2) Regularly employ at least one mechanic who has a safety inspection mechanic license.
- (3) Designate the individual who will be responsible for the day-to-day operation of the station. The individual designated must be of good character and have a reputation for honesty."

Section 2. G.S. 20-183.4C reads as rewritten:

"§ 20-183.4C. When a vehicle must be inspected- inspected; one-way trip permit.

(a) Inspection. -- A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

- (1) A new vehicle must be inspected before it is offered for sale sold at retail in this State.
- (2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer at a location other than a public auction.
- (3) A used vehicle that is offered for sale at retail in this State by a dealer at a public auction must be inspected before it is offered for sale unless it has an inspection sticker that was put on the vehicle under this Part and does not expire until at least nine months after the date the vehicle is offered for sale at auction.
- (4) A used vehicle acquired by a resident of this State from a person outside the State must be inspected within 10 days after the vehicle is registered with the Division.
- (5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected within 10 days after the vehicle is registered with the Division.
- (6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the inspection sticker on the vehicle expires, unless another subdivision of this section requires it to be inspected sooner.

(b) Permit. -- The Division may issue a one-way trip permit to a person that authorizes the person to drive to an inspection station a vehicle whose inspection sticker has expired. The permit must describe the vehicle whose inspection sticker has expired. The permit authorizes the person to drive the described vehicle only from the place the vehicle is parked to an inspection station.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass either the safety inspection or emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection."

Section 3. G.S. 20-183.6 reads as rewritten:

"§ 20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.

A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced

windshields. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was ~~replaced~~ replaced, attach the removed inspection sticker to a copy of the statement given the vehicle owner for replacing the windshield, and keep the removed inspection sticker until 30 days after it expires, that copy of the statement until 18 months after the sticker was removed.

A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the Division may review the records of a person registered under this section during normal business hours.

A person who is registered under this section and has a safety inspection station license or an emissions inspection station license must keep the records of the inspection stickers used on replaced windshields separate from the records of the inspection stickers used on vehicles inspected. A person who is registered under this section and has an inspection station license may not inspect a vehicle whose windshield is being replaced unless the inspection sticker on the windshield has expired or expires at the end of the month in which the windshield is being replaced and the person has the vehicle owner's permission to inspect the vehicle."

Section 4. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. -- When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety Only, Without		
After-Factory Tinted Window	\$ 8.25	\$1.00
Safety Only, With After-		
Factory Tinted Window	18.25	1.00
Emissions and Safety,		
Without After-Factory Tinted Window	17.00	2.40
Emissions and Safety, With		
After-Factory Tinted Window	27.00	2.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for performing an inspection of a vehicle with a tinted window applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee."

Section 5. G.S. 20-183.8 reads as rewritten:

"§ 20-183.8. *Infractions and criminal offenses for violations of inspection requirements.*

(a) **Infractions.** -- A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars (\$50.00):

- (1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current inspection sticker or otherwise.
- (2) Allows an inspection sticker to be put on a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the sticker was attached or was not inspected properly.
- (3) ~~Attaches~~ Puts an inspection sticker ~~to on~~ on a vehicle, knowing or having reasonable grounds to know an inspection of the vehicle was not performed or was performed improperly. A person who is cited for a civil penalty under G.S. 20-183.8B for an emissions violation involving the inspection of a vehicle may not be charged with an infraction under this subdivision based on that same vehicle.

(b) **Defenses to Infractions.** -- Any of the following is a defense to a violation under subsection (a) of this section:

- (1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.
- (2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.
- (3) ~~The vehicle was in a state of disrepair on the date the inspection sticker expired, the owner has since repaired the vehicle, the vehicle is being driven from the owner's residence or other place where the owner repaired the vehicle to an inspection station, and the owner has not otherwise driven the vehicle since the inspection sticker expired.~~
- (4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) **Felony.** -- ~~A person who forges an inspection sticker commits a Class I felony.~~ does any of the following commits a Class I felony:

- (1) Forges an inspection sticker.
- (2) Buys, sells, or possesses a forged inspection sticker.
- (3) Buys, sells, or possesses an inspection sticker other than as the result of either of the following:
 - a. Having a license as an inspection station, a self-inspector, or an inspection mechanic and obtaining the inspection sticker from the Division in the course of business.
 - b. A vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver."

Section 6. G.S. 20-183.8B reads as rewritten:

"§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) **Kinds of Violations.** -- The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) **Penalty Schedule.** -- The Division must take the following action for a violation:

- (1) **Type I.** -- For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars (\$250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within ~~seven~~ three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars (\$1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars (\$100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars (\$250.00) and revoke the mechanic's license for two years.

- (2) **Type II.** -- For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars (\$100.00). For a third or subsequent Type II violation within ~~seven~~ three years by an emissions self-inspector or an emissions inspection station, assess

a civil penalty of two hundred fifty dollars (\$250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars (\$50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars (\$100.00) and suspend the mechanic's license for 90 days.

- (3) Type III. -- For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within ~~seven~~ three years by the same emissions license holder, assess a civil penalty of twenty-five dollars (\$25.00).

(c) Station or Self-Inspector Responsibility. -- It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A ~~Type I~~ violation by an emissions inspector mechanic is considered a ~~Type I~~ violation by the station or self-inspector for whom the mechanic is employed. ~~A Type II or III violation by an emissions mechanic is not automatically a Type II or III violation by the station or self-inspector for whom the mechanic is employed. The Division may determine which Type II or Type III violations by an emissions mechanic are also violations by the station or self-inspector.~~

(d) Missing Stickers. -- The Division must assess a civil penalty against an emissions inspection station or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

The amount of the penalty is twenty-five dollars (\$25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b). Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b).

(e) Mechanic Training. -- An emissions inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4A and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully."

Section 7. G.S. 20-183.8C reads as rewritten:

"§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) Type I. -- It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

- (1) Put an emissions inspection sticker on a vehicle without performing an emissions inspection of the vehicle ~~or after performing an emissions inspection in which the vehicle did not pass the inspection.~~ vehicle.
 - (1a) Put an emissions inspection sticker on a vehicle after performing an emissions inspection of the vehicle and determining that the vehicle did not pass the inspection.
 - (2) Use a test-defeating strategy when conducting an emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, or changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year to achieve a passing result.
 - (3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.
 - (4) Sell or otherwise give an inspection sticker to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.
 - (5) Be unable to account for five or more inspection stickers at any one time upon the request of an auditor of the Division.
 - (6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.
 - (7) Transfer an inspection sticker from one vehicle to another.
- (b) Type II. -- It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:
- (1) Use the identification code of another to gain access to an emissions analyzer.
 - (2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.
 - (3) Put an emissions inspection sticker on a vehicle that is required to have one of the following emissions control devices but does not have it:
 - a. Catalytic converter.
 - b. PCV valve.
 - c. Thermostatic air control.
 - d. Oxygen sensor.
 - e. Unleaded gas restrictor.
 - f. Gasoline tank cap.
 - g. Air injection system.
 - h. Evaporative emissions system.
 - i. Exhaust gas recirculation (EGR) valve.
 - (4) Put an emissions inspection sticker on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.
 - (5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions inspection sticker or impose a fee for

one of these actions in an amount that differs from the amount set in G.S. 20-187.3.

(c) Type III. -- It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

- (1) Fail to post an emissions license issued by the Division.
- (2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.
- (3) Fail to post emissions information required by federal law to be posted.
- (4) Fail to put the required information on an inspection sticker in a legible manner using ink.
- (5) Fail to put the required information on an inspection receipt in a legible manner.
- (6) Fail to maintain an emissions analyzer maintenance log.

(d) Other Acts. -- The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation."

Section 8. G.S. 20-183.8D reads as rewritten:

"§ 20-183.8D. ~~Suspension or revocation of license for safety violations.~~ license.

(a) Safety. -- The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part.

(b) Emissions. -- The Division may suspend or revoke an emissions self-inspector license, an emissions inspection station license, and an emissions inspection mechanic license issued under this Part for any of the following reasons:

- (1) The suspension or revocation is imposed under G.S. 20-183.8B.
- (2) Failure to pay a civil penalty imposed under G.S. 20-183.8B within 30 days after it is imposed."

Section 9. Article 3A of Chapter 20 of the General Statutes is amended by inserting a new section between G.S. 20-183.8D and G.S. 20-183.8E to read:

"§ 20-183.8D.1. Requirements for giving certain emissions license holders notice of violations and for taking summary action.

(a) Finding of Violation. -- When an auditor of the Division finds that an emissions violation has occurred that could result in the suspension or revocation of an emissions inspection station license, an emissions self-inspector license, or an emissions mechanic license, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the violation occurred. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.

(b) Notice of Charges. -- When the Division decides to charge an emissions inspection station, an emissions self-inspector, or an emissions mechanic with a violation that could result in the suspension or revocation of the person's emissions license, an auditor of the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of this right, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. G.S. 20-183.8E sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. -- The right granted by subsection (b) of this section to have a hearing before an emissions license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an emissions inspection station, an emissions self-inspector, or an emissions mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review."

Section 10. G.S. 20-183.8E reads as rewritten:

"§ 20-183.8E. *Administrative and judicial review.*

~~A person whose application for a license or registration is denied, whose license or registration is suspended or revoked, who is assessed a civil penalty, or who receives a warning letter under this Part may obtain an administrative review of the action by the Commissioner by filing with the Division a written request for a hearing before the Commissioner. A request for a hearing must be filed within 10 days after the person receives written notice of the action for which a hearing is requested.~~

~~If the action that is the subject of a request for a hearing is the suspension or revocation of an emissions self-inspector license, an emissions inspection station license, or an emissions inspection mechanic license, the Commissioner must hold the hearing within 14 days after the Division receives the request. If the action that is the subject of a request for a hearing is not one of these actions, the Commissioner must hold a hearing within 90 days after the Division receives the request.~~

(a) Right to Hearing. -- A person who applies for a license or registration under this Part or who has a license or registration issued under this Part has the right to a hearing when any of the following occurs:

- (1) The Division denies the person's application for a license or registration.
- (2) The Division delivers to the person a written statement of charges of an emissions violation that could result in the suspension or revocation of the person's emissions license.
- (3) The Division summarily suspends or revokes the person's license following review and authorization of the proposed adverse action by a judge.
- (4) The Division assesses a civil penalty against the person.
- (5) The Division issues a warning letter to the person.
- (6) The Division cancels the person's registration.

(b) Hearing After Statement of Charges. -- When an emissions license holder receives a statement of charges of an emissions violation that could

result in the suspension or revocation of the person's emissions license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within three business days after receiving the request unless the person requesting the hearing asks for additional time to prepare for the hearing. A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing.

(c) Hearing After Summary Action. -- When the Division summarily suspends a license issued under this Part after judicial review and authorization of the proposed action, the person whose license was suspended or revoked may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person was notified of the summary action. The Division must hold a hearing requested under this subsection within 14 days after receiving the request.

(d) All Other Hearings. -- When this section gives a person the right to a hearing and subsection (b) or (c) of this section does not apply to the hearing, the person may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person receives written notice of the action for which a hearing is requested. The Division must hold a hearing within 90 days after the Division receives the request.

(e) Review by Commissioner. -- The Commissioner may conduct a hearing required under this section or may designate a person to conduct the hearing. When a person designated by the Commissioner holds a hearing and makes a decision, the person who requested the hearing has the right to request the Commissioner to review the decision. The procedure set by the Division governs the review by the Commissioner of a decision made by a person designated by the Commissioner.

(f) Decision. -- After A decision made after a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder, the Commissioner holder must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the Commissioner finds decision contains a finding that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was

imposed. ~~After A decision made after a hearing on any other action, the Commissioner action may uphold or modify the action.~~

(g) Judicial Review. -- Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision ~~by the Commissioner made under this section.~~

Section 11. G.S. 20-99(e) reads as rewritten:

"(e) The provisions, procedures, and remedies provided in this section ~~shall be applicable apply~~ to the collection of penalties imposed under the provisions of Article 3A of this Chapter and of G.S. 20-96, G.S. 20-118, or any other provisions of this Chapter imposing a tax or penalty for operation of a vehicle in excess of the weight limits provided in this Chapter and the Commissioner is authorized to collect such taxes or penalties by the use of the procedure established in subsections (a), (b), (c) and (d) of this section."

Section 12. G. S. 20-183.2(b)(5)d. reads as rewritten:

"d. It is a used vehicle offered for sale by a dealer in an emissions county and is not a new vehicle that has not been titled. county."

Section 13. G.S. 20-183.8(c), as amended by Section 5 of this act, becomes effective November 1, 1997, and applies to offenses committed on or after that date. The remaining changes made by Section 5 of this act and the other sections of this act become effective July 1, 1997.

In the General Assembly read three times and ratified this the 10th day of April, 1997.

Became law upon approval of the Governor at 12:13 p.m. on the 17th day of April, 1997.

H.B. 189

CHAPTER 30

AN ACT TO AMEND THE NORTH CAROLINA DRINKING WATER ACT SO THAT IT CONFORMS WITH FEDERAL LAW, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-313(10) reads as rewritten:

"(10) 'Public water system' means a system for the provision to the public of ~~pipe water for human consumption~~ water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. The term includes:

- a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and
- b. Any collection or pretreatment storage facility not under the control of the operator of the system ~~which~~ that is used primarily in connection with the system.

A public water system is either a 'community water system' or a 'noncommunity water system' as follows:

- a. 'Community water system' means a public water system which that serves 15 or more service connections or which that regularly serves at least 25 year-round residents.
- b. 'Noncommunity water system' means a public water system which that is not a community water system.

A connection to a system that delivers water by a constructed conveyance other than a pipe is not a connection within the meaning of this subdivision under any one of the following circumstances:

- a. The water is used exclusively for purposes other than residential uses. As used in this subdivision, 'residential uses' mean drinking, bathing, cooking, or other similar uses.
- b. The Department determines that alternative water to achieve the equivalent level of public health protection pursuant to applicable drinking water rules is provided for residential uses.
- c. The Department determines that the water provided for residential uses is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable drinking water rules."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of April, 1997.

Became law upon approval of the Governor at 12:13 p.m. on the 17th day of April, 1997.

S.B. 140

CHAPTER 31

AN ACT TO ADD TWO MEMBERS TO THE ENVIRONMENTAL REVIEW COMMISSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-70.42 reads as rewritten:

"§ 120-70.42. *Membership; ~~cochairmen~~ cochairs; vacancies; quorum.*

The Environmental Review Commission shall consist of ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, ~~five~~ six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the ~~Chairman~~ Chair of the Senate Committee on Environment and Natural Resources, and the ~~Chairman~~ Chair of the House of Representatives Committee on the Environment. The President Pro Tempore of the Senate shall designate one Senator to serve as ~~cochairman~~ cochair and the Speaker of the House of Representatives shall designate one Representative to serve as ~~cochairman~~ cochair. Any vacancy which occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of ~~seven~~ eight members."

Section 2. This act is effective when it becomes law and applies to any appointments for terms beginning on or after that date.

In the General Assembly read three times and ratified this the 10th day of April, 1997.

Became law upon approval of the Governor at 5:50 p.m. on the 17th day of April, 1997.

S.B. 291

CHAPTER 32**AN ACT PROVIDING FOR NONPARTISAN ELECTIONS OF THE JOHNSTON COUNTY BOARD OF EDUCATION.**

The General Assembly of North Carolina enacts:

Section 1. Beginning with the 1998 election, the Johnston County Board of Education shall be elected in nonpartisan elections held in even-numbered years as provided in this act.

Section 2. The Board of Education shall continue to consist of seven members elected at large for four-year staggered terms. Three members shall be elected in 1998 and every four years thereafter; and four members shall be elected in 2000 and every four years thereafter.

Section 3. The period of filing of candidates for the Board of Education shall be the same as for other county offices. If the number of candidates who qualify to run for the board in any election year is at least three more than twice the number of seats being elected that year, there shall be a nonpartisan primary held at the same time as party primaries for other county offices; otherwise, there shall be no primary. The purpose of the primary, if one is required, shall be to reduce the number of candidates to twice the number of seats open. The number of candidates receiving the most votes in the primary, equal to twice the number of seats open, shall be nominated for the November general election, with no second primary.

Section 4. If a vacancy occurs on the Board of Education, the remaining members of the board shall appoint a person to fill that seat. The person appointed to fill the vacancy shall serve the remainder of the unexpired term of the office.

Section 5. Members of the Board of Education elected in 1996 for four-year terms under the partisan method of selection shall be entitled to complete the terms for which they were elected.

Section 6. Chapter 218 of the Session Laws of 1991 and Chapter 261 of the Session Laws of 1969 are repealed.

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of April, 1997.

Became law on the date it was ratified.

H.B. 178

CHAPTER 33**AN ACT TO INCREASE FROM ONE YEAR TO TWO YEARS THE RENEWAL PERIOD FOR LICENSES ISSUED BY THE DIVISION OF**

MOTOR VEHICLES TO COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-324 reads as rewritten:

"§ 20-324. *Expiration and renewal of licenses; fees.*

~~All licenses issued under the provisions of this Article shall expire on the last day of June in the year following their issuance and may be renewed upon application to the Commissioner as prescribed by his regulations. Each application for a new or renewal school license shall be accompanied by a fee of forty dollars (\$40.00), and each application for a new or a renewal instructor's license shall be accompanied by a fee of eight dollars (\$8.00). The license fees collected under this section shall be used under the supervision and direction of the Director of the Budget for the administration of this Article. No license fee shall be refunded in the event that the license is rejected, suspended, or revoked.~~

(a) Renewal. -- A license issued under this Article expires two years after the date the license is issued. To renew a license, the license holder must file an application for renewal with the Division.

(b) Fees. -- An application for an initial license or the renewal of a license must be accompanied by the application fee for the license. The application fee for a school license is eighty dollars (\$80.00). The application fee for an instructor license is sixteen dollars (\$16.00). The application fee for a license is not refundable. Fees collected under this section must be credited to the Highway Fund."

Section 2. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 15th day of April, 1997.

Became law upon approval of the Governor at 2:00 p.m. on the 23rd day of April, 1997.

S.B. 187

CHAPTER 34

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LAWS ON ADMINISTRATIVE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-4(b) is repealed.

Section 2. G.S. 150B-20(c) reads as rewritten:

"(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition requesting the creation or amendment of a rule, petition, the notice of rule-making rule-making proceedings it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition, petition and state the name of the person who submitted the rule-making petition, petition. If the

rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making petition, petition and state whether the agency endorses the proposed rule change, text."

Section 3. G.S. 150B-21.3(f) reads as rewritten:

"(f) Technical Change. -- A permanent rule for which no notice or hearing is required under G.S. ~~150B-21.5(a) or (b)~~ 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission."

Section 4. G.S. 150B-21.5 reads as rewritten:

"§ 150B-21.5. *Circumstances when notice and rule-making hearing not required.*

(a) Amendment. -- An agency is not required to publish a notice of rule making rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a rule, without changing the substance of the rule, rule to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address or a telephone number.
- (5) Correct a typographical error in the North Carolina Administrative Code.
- (6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. -- An agency is not required to publish a notice of rule making rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

- (1) The law under which the rule was adopted is repealed.
- (2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
- (3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. -- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule making rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection."

Section 5. G.S. 150B-21.6(3) is repealed.

Section 6. G.S. 150B-21.20 reads as rewritten:

"§ 150B-21.20. *Codifier's authority to revise form of rules.*

(a) Authority. -- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

- (1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
- (2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
- (3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
- (4) Rearrange definitions and lists.
- (5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
- (6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. -- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official ~~rule~~. rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published."

Section 7. G.S. 150B-21.21 reads as rewritten:

"§ 150B-21.21. *Publication of rules of North Carolina State Bar and exempt agencies.*

(a) State Bar. -- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within ~~15~~ 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. -- Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled 'North Carolina Utilities Laws and Regulations.' The Utilities Commission must submit a rule required to be included in the Code

within ~~15~~ 30 days after it is adopted. ~~The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.~~

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. ~~One of these~~ These exempt agencies must submit a rule to the Codifier of Rules within ~~15~~ 30 days after it ~~adopts~~ adopting the rule. ~~The~~

(c) Publication. -- A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule of ~~one of these agencies in the North Carolina Administrative Code submitted under this section in the same manner as other rules in the North Carolina Administrative Code.~~

Section 8. G.S. 150B-21.22 reads as rewritten:

"§ 150B-21.22. *Effect of inclusion in Code.*

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. ~~Codification of a rule in the North Carolina Administrative Code is prima facie evidence of compliance with this Article.~~

Section 9. G.S. 150B-21.23 reads as rewritten:

"§ 150B-21.23. *Rule publication manual.*

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of ~~rule-making~~ rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code."

Section 10. G.S. 1A-1, Rule 40 reads as rewritten:

"Rule 40. *Assignment of cases for trial; continuances.*

(a) The senior resident superior court judge of any superior court district or set of districts as defined in G.S. 7A-41.1 may provide by rule for the calendaring of actions for trial in the superior court division of the various counties within his district or set of districts. Calendaring of actions for trial in the district court shall be in accordance with G.S. 7A-146. Precedence shall be given to actions entitled thereto by any statute of this State.

(b) No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly, Assembly or the Rules Review Commission."

Section 11. G.S. 7A-751 reads as rewritten:

"§ 7A-751. *Agency head; powers and duties.*

The head of the Office of Administrative Hearings is the Chief Administrative Law Judge. ~~He~~ The Judge, who shall serve as Director ~~and have~~ of the Office. The Chief Administrative Law Judge has the powers and duties conferred on him that position by this Chapter and the Constitution

and laws of this State. His State and may adopt rules to implement the conferred powers and duties.

The salary of the Chief Administrative Law Judge shall be fixed by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises, the Chief Administrative Law Judge shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act."

Section 12. G.S. 15A-952(g) reads as rewritten:

"(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

- (1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
- (2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and
- (3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.
- (4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly, Assembly or the Rules Review Commission."

Section 13. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

Became law upon approval of the Governor at 2:00 p.m. on the 23rd day of April, 1997.

H.B. 409

CHAPTER 35

AN ACT CLARIFYING WHERE APPEALS FROM AGRICULTURAL EMPLOYERS WILL BE HEARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-227 reads as rewritten:

"§ 95-227. *Enforcement.*

For the purpose of enforcing the standards provided by this Article, the provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall apply under this Article in a similar manner as they apply to places of employment under OSHANC; however, ~~G.S. 95-129(4), 95-130(2) and (6), and 95-137(b)(4)~~ G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to migrant housing. For the purposes of this Article, the term:

- (1) 'Employer' in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall be construed to mean an operator;
- (2) 'Employee' shall be construed to mean a migrant; and
- (3) 'Director' shall mean the agent designated by the Commissioner to assist in the administration of this Article.

The Commissioner may establish a new division to enforce this Article."

Section 2. G.S. 150B-1(e) reads as rewritten:

"(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

- (1) The Department of Human Resources and the Department of Environment, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
- (2) Repealed by Session Laws 1993, c. 501, s. 29.
- (3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.
- (4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
- (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
- (6) The Department of Revenue.
- (7) The Department of Correction.
- (8) The Department of Transportation, except as provided in G.S. 136-29.
- (9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers. Board.
- (10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (11) Hearings that are provided by the Department of Human Resources regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

Became law upon approval of the Governor at 2:01 p.m. on the 23rd day of April, 1997.

AN ACT TO ALLOW PRIVATE PASSENGER AND PRIVATE PROPERTY-HAULING VEHICLES WEIGHING UP TO SIX THOUSAND POUNDS TO BE ISSUED "FIRST IN FLIGHT" PLATES

**AND TO CLARIFY THAT THE DIVISION OF MOTOR VEHICLES
MAY ISSUE PERSONALIZED COMMERCIAL LICENSE PLATES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, the year number for which it is issued or the date of expiration, and, if the plate is issued for a commercial vehicle, as defined in G.S. 20-4.2(1), the word 'commercial,' designating 'commercial vehicle.' The Division may not issue a plate bearing the word 'commercial' for a trailer, or a vehicle licensed for less than 5,000, 6,000 pounds or less. ~~a property-hauling vehicle, or a commercial vehicle bearing a personalized plate.~~

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 4,000 6,000 pounds or less shall be a 'First in Flight' plate. A 'First in Flight' plate shall have the words 'First in Flight' printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

Section 2. This act becomes effective January 1, 1998, and applies to new or renewal vehicle registrations occurring on or after that date.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

Became law upon approval of the Governor at 2:02 p.m. on the 23rd day of April, 1997.

H.B. 740

CHAPTER 37

**AN ACT TO ASSIST THE JOHNSTON COUNTY BOARD OF
EDUCATION WITH THE EXPEDITING OF PUBLIC SCHOOL
FACILITIES.**

Whereas, Johnston County is faced with the critical need for school facilities created by an unusual growth in student population; and

Whereas, the Johnston County Board of Education and the Johnston County Board of Commissioners have jointly approved and funded a School Facilities 2000 building program; and

Whereas, the Johnston County Board of Education, faced with the critical need for school facilities, has implemented a model facilities plan using the Unitary System Approach (USA) to design school facilities that are educationally effective and economically efficient; and

Whereas, the Johnston County Board of Education has competitively bid the USA school design under the separate prime bid laws of North Carolina and has developed certain cost parameters based on this USA concept; and

Whereas, the Johnston County Board of Education desires to explore alternative approaches to expedite the construction of school facilities that could assist in meeting the critical need for school facilities; and

Whereas, the General Assembly reaffirms its commitment to enhance public education and to encourage innovation by public officials in meeting the critical need for school facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, the Johnston County Board of Education may select and negotiate with separate prime contractors to build the Unitary System Approach (USA) model school plan if the Johnston County Board of Education determines that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule.

Section 2. This act shall apply to construction of an elementary school at McGee's Crossroads, an elementary school in Benson, and an elementary/middle school in West Johnson County. The Johnson County Board of Education shall report to the General Assembly the net price per square foot for each project at the completion of each project.

Section 3. This act is effective when it becomes law and expires on June 30, 2000.

In the General Assembly read three times and ratified this the 24th day of April, 1997.

Became law on the date it was ratified.

S.B. 286

CHAPTER 38

AN ACT TO MAKE AN EMERGENCY APPROPRIATION, ON THE REQUEST OF THE GOVERNOR, TO THE NEW AND EXPANDING INDUSTRY TRAINING PROGRAM.

Whereas, the New and Expanding Industry Training Program in the Department of Community Colleges assists companies creating new jobs in North Carolina by providing training for new employees; and

Whereas, the Program provides customized training to new or prospective employees in specific job skills needed by new or expanding industries; and

Whereas, the Program supports local, regional, and State economic development goals by offering entry-level training at no cost to companies that are creating new jobs in the State; and

Whereas, the General Assembly provided \$10,800,000 to the Program for the 1996-97 fiscal year from a combination of appropriations, carryforward funds, and transfers; and

Whereas, funds available in the Department of Community Colleges budget for transfer to the Program will not meet current demand for Program services; and

Whereas, due to the extraordinary growth of new and expanding industry in the State, the Program will need an additional \$4,700,000 for the 1996-97 fiscal year to meet current demand for Program services; and

Whereas, the Executive Budget Act authorizes the General Assembly to make an emergency appropriation to the Program for the 1996-97 fiscal year upon the request of the Governor; and

Whereas, the Governor has made such a request in a letter to the President Pro Tempore of the Senate and the Speaker of the House of Representatives; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the 1996-97 unreserved credit balance in the General Fund to the Department of Community Colleges the sum of four million seven hundred thousand dollars (\$4,700,000) for the 1996-97 fiscal year to cover the shortfall in the New and Expanding Industry Training Program.

Section 2. The provisions of G.S. 143-16.3 shall not apply to the New and Expanding Industry Training Program for the 1996-97 fiscal year.

Section 3. The State Board of Community Colleges shall require local colleges and the Department of Community Colleges to monitor closely all expenditures made to industries under this Program, including verification that the funds are used for appropriate job training purposes. College personnel shall make regular visits to training classes to assure that the funds are used consistent with a training plan developed jointly by the college and the industry. No funds shall be solely pass-through money for an industry.

Section 4. The North Carolina Community College System New and Expanding Industry Training (NEIT) Program Guidelines adopted by the State Board of Community Colleges on April 18, 1997, shall apply to all funds appropriated for the Program.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of April, 1997.

Became law upon approval of the Governor at 4:30 p.m. on the 24th day of April, 1997.

H.B. 429

CHAPTER 39

AN ACT TO ALLOW THE CITIES OF RALEIGH AND ROANOKE RAPIDS AND THE TOWN OF WAYNESVILLE TO DONATE UNCLAIMED BICYCLES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 650 of the 1993 Session Laws, as amended by Chapter 106 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the Cities of ~~Asheville and Hendersonville~~ Asheville, Hendersonville, Raleigh, and Roanoke Rapids and the Town of Waynesville only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of April, 1997.

Became law on the date it was ratified.

S.B. 38

CHAPTER 40

AN ACT TO ESTABLISH THE STUDY COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Study Commission on the Future of Electric Service in North Carolina is created. The Commission shall consist of 23 voting members as follows:

- (1) Six members of the Senate to be appointed by the President Pro Tempore of the Senate;
- (2) Six members of the House of Representatives to be appointed by the Speaker of the House of Representatives;
- (3) The Chief Executive Officer of the North Carolina Electric Membership Corporation or the Chief Executive Officer's designee;
- (4) The Chief Executive Officer of Electricities of North Carolina or the Chief Executive Officer's designee;
- (5) The Chief Executive Officer of Duke Power Company or the Chief Executive Officer's designee;
- (6) The Chief Executive Officer of Carolina Power and Light Company or the Chief Executive Officer's designee;
- (7) Two residential consumers of electricity, one to be appointed by the President Pro Tempore of the Senate and one to be appointed by the Speaker of the House of Representatives;
- (8) One commercial consumer of electricity to be appointed by the President Pro Tempore of the Senate;
- (9) Two industrial consumers of electricity, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate;
- (10) One member of the environmental community to be appointed by the Governor; and
- (11) One person representing a nationwide electric power marketer to be appointed by the Speaker of the House of Representatives.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair from the General Assembly membership serving on the Commission. The Commission shall meet upon the call of the cochairs. A majority of the Commission shall constitute a quorum for the transaction of business.

Section 2. The Commission shall examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. The Commission shall gather data and other information as may be necessary to accomplish the purposes

of the Commission, including testimony at public hearings, and shall work cooperatively with other boards, commissions, and entities, taking advantage of their resources and activities for the provision of useful information and insight. In the course of its study, the Commission shall seek input and advice from the Attorney General, the North Carolina Utilities Commission, and the Public Staff of the Utilities Commission. The Commission shall also obtain guidance by reviewing electric utility restructuring experiments conducted in other states.

In the course of its study and in making its recommendations, the Commission shall fully address the following issues:

- (1) Assurance of fairness and equity among all customer classes;
- (2) Reliability of power supply;
- (3) Fair treatment of competing power providers;
- (4) Universal access to electric energy and assignment of responsibility to provide it;
- (5) Reciprocity between states;
- (6) Stranded investment costs and benefits;
- (7) Clarification of State and federal jurisdiction;
- (8) Environmental impact of restructuring;
- (9) Impact of competition on tax revenues;
- (10) Alternative forms of regulation;
- (11) Obligation to serve and the obligation to receive service;
- (12) Ways to eliminate or equalize subsidies and tax preferences;
- (13) Customer choice of electric providers;
- (14) Functional unbundling of electric power generation, transmission, and distribution services;
- (15) Impact of competition on service to low-income consumers;
- (16) Impact of competition on renewable energy, conservation, and efficiency programs;
- (17) Impact of competition on the energy expenditures by State and local government;
- (18) Impact of competition on economic development;
- (19) Impact of competition on municipal electric utilities and rural electric cooperatives;
- (20) Prevention of anticompetitive or discriminatory conduct or the unlawful exercise of market power; and
- (21) Other relevant and appropriate subjects.

Section 3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession,

ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6; and
- (3) All other Commission members at the rate established in G.S. 138-5.

Section 4. The Commission shall make a report to the 1998 Regular Session of the 1997 General Assembly, which may contain recommendations, and shall report the results of its study and its recommendations to the 1999 General Assembly. The Commission shall terminate upon filing its final report.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of April, 1997.

Became law upon approval of the Governor at 2:55 p.m. on the 30th day of April, 1997.

H.B. 517

CHAPTER 41

AN ACT TO EXTEND THE DEADLINE FOR RAISING FUNDS FOR CONSTRUCTION OF THE NORTH CAROLINA INDIAN CULTURAL CENTER PROVIDED THAT THE NORTH CAROLINA INDIAN CULTURAL CENTER, INC., REORGANIZES ITSELF TO FACILITATE THE FUND-RAISING PROCESS.

The General Assembly of North Carolina enacts:

Section 1. Subsection (a) of Section 18 of Chapter 1074 of the 1989 Session Laws, as amended by subsection (e) of Section 22 of Chapter 900 of the 1991 Session Laws, Section 1 of Chapter 88 of the 1993 Session Laws, and Section 33 of Chapter 561 of the 1993 Session Laws, reads as rewritten:

"(a) The State of North Carolina shall lease out to the North Carolina Indian Cultural Center, Inc., for a period of 99 years at a monetary consideration of \$1.00 per year all the real property it acquired for the Indian Cultural Center, except that portion containing the Riverside Golf Course, but no part of Phase I of the project may be constructed either by the State or for the lessee until an environmental impact assessment is completed on Phase I of the property, and if required pursuant to Article 1 of Chapter 113A of the General Statutes, an environmental impact statement is prepared. The State shall enter into a lease agreement in accordance with this section not later than December 31, 1993. If the State and the North Carolina Indian Cultural Center, Inc., do not enter into a lease agreement by December 31, 1993, then the property may be used for any public purpose.

Any lease agreement entered into by the State with the North Carolina Indian Cultural Center, Inc., shall include but not be limited to the following terms:

- (1) An environmental impact assessment pursuant to Article 1 of Chapter 113A of the General Statutes is completed on Phase I of the property.
- (2) The lease shall include a reversionary clause stipulating that the North Carolina Indian Cultural Center, Inc., must raise funds or receive pledges totalling ~~the \$4,160,000 necessary to complete Phase I of this project within three years from the date of execution of the lease agreement.~~ three million dollars (\$3,000,000) by June 1, 2001.
- (3) ~~If the funds or pledges are not obtained within three years from the date of execution, by June 1, 2001, then this lease agreement will automatically terminate.~~
- (4) ~~The North Carolina Indian Cultural Center, Inc., as lessee, may conduct no construction of Phase I on the premises until it has fulfilled the terms of the lease agreement."~~

Section 2. (a) In order for Section 1 of this act to remain effective after December 31, 1997, the North Carolina Indian Cultural Center, Inc., a private nonprofit corporation organized under the laws of this State, shall reorganize itself as provided in subsection (b) of this section and comply with the remainder of the provisions of this section.

(b) The Board of the North Carolina Indian Cultural Center, Inc., shall consist of 15 members, appointed as follows:

- (1) One member representing each of the following Indian groups recognized by the State of North Carolina: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke, and Scotland Counties; the Meherrin of Hertford County; and the Waccamaw-Siouan from Columbus and Bladen Counties;
- (2) One member each from the following Indian organizations: the Cumberland County Association for Indian People, the Guilford Native Americans, and the Metrolina Native Americans;
- (3) One member representing the education community of the State;
- (4) Two members representing the business community of the State;
- (5) Two members representing the government of the State of North Carolina; and
- (6) One member representing the federal government.

Each member designated in subdivisions (1) and (2) above shall be appointed by the North Carolina Commission of Indian Affairs from two prioritized nominations submitted by the group or organization to be represented by that member. Each member designated in subdivisions (3) through (6) above shall be appointed by the North Carolina Commission of Indian Affairs from two prioritized nominations submitted by the Board of the North Carolina Indian Cultural Center, Inc. If the nominating group or organization submits only one nomination or fails to submit nominations for any reason within 30 days after the date designated for submission by the

Commission, the Commission shall appoint a member of its choice to fill the requirement. The Board of the North Carolina Indian Cultural Center, Inc., shall appoint a chair from the Board membership.

Members shall serve two-year terms, except that the initial terms of:

- (1) The members representing the Coharie of Sampson and Harnett Counties, the Eastern Band of Cherokees, and the Meherrin of Hertford County; the member representing the Metrolina Native Americans; the member representing the education community of the State; one member representing the government of the State of North Carolina; and one member representing the federal government shall be for one year; and
- (2) The members representing the Haliwa of Halifax, Warren, and adjoining counties, the Lumbees of Robeson, Hoke, and Scotland Counties, and the Waccamaw-Siouan from Columbus and Bladen Counties; the members representing the Cumberland County Association for Indian People and the Guilford Native Americans; the member representing the business community of the State; one member representing the government of the State of North Carolina; and one member representing the federal government shall be for two years.

(c) The North Carolina Indian Cultural Center, Inc., may commence the renovation of the Henry Berry Lowry House as soon as it has raised sufficient funds to do so and upon approval of the Department of Administration. The North Carolina Indian Cultural Center, Inc., may commence the nonpermanent construction of Phase I of the project as soon as it has raised sufficient funds to complete that portion of the project and upon the approval of the Department of Administration. Construction of any of the permanent buildings included in Phase I of the project may commence once the North Carolina Indian Cultural Center, Inc., has raised funds or pledges totalling two million dollars (\$2,000,000) or when the Office of State Construction, Department of Administration has authorized the commencement of that construction.

(d) The Board of the North Carolina Indian Cultural Center, Inc., shall consult with the North Carolina Commission of Indian Affairs, Department of Administration, and shall seek guidance from the Commission in connection with its fund-raising efforts and the construction process. The Department of Administration shall review the working relationship between the North Carolina Indian Cultural Center, Inc., and the North Carolina Commission of Indian Affairs in January of each odd-numbered year beginning in 1999 and shall report its findings to the Governor by March 1 of that year, including a recommendation on whether the relationship should continue. The Department of Administration shall review the progress of the Board's fund-raising efforts and report its findings to the General Assembly and the Governor by March 1, 2000.

(e) The North Carolina Indian Cultural Center, Inc., may appoint an advisory board composed of membership of its choosing to advise and assist the Board in its fund-raising efforts and in managing the construction and operation of the North Carolina Indian Cultural Center.

Section 3. Section 1 of this act is effective when it becomes law, but shall expire on January 1, 1998, if the North Carolina Commission of Indian Affairs has not certified by that date that the North Carolina Indian Cultural Center, Inc., has reorganized itself as provided for in subsection (b) of Section 2 of this act and is complying with the remainder of the provisions of that section. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of April, 1997.

Became law upon approval of the Governor at 2:57 p.m. on the 30th day of April, 1997.

S.B. 363

CHAPTER 42

AN ACT TO ALLOW HARNETT COUNTY TO ACQUIRE AND OTHERWISE MAKE AVAILABLE PROPERTY FOR USE BY THE BOARD OF TRUSTEES OF A COMMUNITY COLLEGE WITHIN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 613 of the 1993 Session Laws, as amended by Chapters 154, 399, and 706 of the 1995 Session Laws, reads as rewritten:

"Section 3. This act applies only to Gaston, Green, Halifax, Harnett, Montgomery, Nash, Sampson, and Wilson Counties."

Section 2. The amendments to G.S. 153A-158 made by Chapter 613 of the 1993 Session Laws and Chapter 399 of the 1995 Session Laws apply to Harnett County.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law on the date it was ratified.

H.B. 100

CHAPTER 43

AN ACT TO PROVIDE FOR ELECTION OF MEMBERS OF THE HERTFORD COUNTY BOARD OF EDUCATION IN NOVEMBER OF EVEN-NUMBERED YEARS.

The General Assembly of North Carolina enacts:

Section 1. Beginning with the 1998 election, members of the Hertford County Board of Education shall be elected in November of even-numbered years at the same time as the general election for State and county officers. Elections shall continue to be conducted by the nonpartisan plurality method.

Section 2. Unless the General Assembly by general State law provides a different period for the filing of notices of candidacy for nonpartisan plurality elections held in November of even-numbered years, the filing period for the Hertford County Board of Education shall

commence at noon on the first Friday in July and close at noon on the first Friday in August preceding the election.

Section 3. Except as otherwise provided in this act, elections for the Hertford County Board of Education shall be conducted according to general State law for county school boards.

Section 4. This act shall not be implemented until it has been precleared pursuant to section 5 of the Voting Rights Act of 1965.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 236

CHAPTER 44

AN ACT TO INCORPORATE THE CITY OF TRINITY.

The General Assembly of North Carolina enacts:

Section 1. (a) The Randolph County Board of Elections shall conduct an election on July 8, 1997, for the purpose of submission to the qualified voters of the area described in Section 2-1 of the Charter of the City of Trinity, the question of whether or not such area shall be incorporated as the City of Trinity. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the City of Trinity".

Section 2. In the election, if a majority of the votes are cast "FOR Incorporation of the City of Trinity", Sections 3 through 5 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 3 through 5 of this act have no force and effect.

Section 3. A Charter of the City of Trinity is enacted as follows:

"THE CHARTER OF THE CITY OF TRINITY.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. The inhabitants of the City of Trinity are a body corporate and politic under the name 'City of Trinity'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2-1. **City Boundaries.** Until modified in accordance with the law, the boundaries of the City of Trinity are as follows:

That area set out as the corporate limits of the City of Trinity on a boundary map recorded at Book 47, Page 98, Randolph County Registry.

"CHAPTER III.

"GOVERNING BODY.

"Section 3-1. **Structure of the Governing Body; Number of Members.** The governing body of the City of Trinity is the City Council which has eight members.

"Section 3-2. **Manner of Electing Council.** The city is divided into four wards, each with two members, and the qualified voters of the entire city elect candidates who reside in that ward for the seats apportioned to that ward. Each ward shall have the same number of persons as nearly as practicable.

"Section 3-3. **Term of Office of Council Members.** Members of the Council are elected to four-year terms. In 1997, two persons shall be elected for each ward. The candidate in each ward receiving the highest number of votes is elected to a four-year term, and the candidate receiving the next highest number of votes is elected to a two-year term. In 1999 and biennially thereafter, one member shall be elected from each ward for a four-year term.

"Section 3-4. **Mayor; Term of Office.** In 1997 and quadrennially thereafter, the Mayor shall be selected by the qualified voters of the city for a four-year term.

"Section 3-5. **Vacancies.** Notwithstanding G.S. 160A-63, any person appointed to fill a vacancy in the City Council or as Mayor shall serve for the remainder of the unexpired term.

"CHAPTER IV.

"ELECTIONS.

"Section 4-1. Election of the Mayor and Council members shall be on a nonpartisan plurality basis and the results determined in accordance with G.S. 163-292.

"Section 4-2. Election results shall be determined by the Randolph County Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Section 5-1. **Mayor-Council Plan.** The City of Trinity shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"CHAPTER VI.

"OTHER PROVISIONS.

"Section 6-1. **Open Meetings.** Notwithstanding Article 33C of Chapter 143 of the General Statutes, the City Council may not hold a closed session.

"Section 6-2. **Council Votes.** The ayes and noes shall be recorded upon all ordinances and resolutions and entered upon the minutes of the Council. The ordaining clause of all ordinances shall be 'Be it ordained by the City Council of the City of Trinity.'"

Section 4. From the effective date of this Charter until the organizational meeting of the City Council after the 1997 municipal election, the members of the Council shall be: Paul Guthrie, Jerry Royals, Barbara Ewings, Larry Overcash, Kenneth Orr, Pam Goins, and Dean Spinks. They shall elect from among their membership a Chairman, who shall have the powers of the Mayor until a Mayor is elected and qualifies at the organizational meeting after the 1997 municipal election.

Section 5. (a) The City Council shall, no later than August 8, 1997, adopt a plan to divide the city into four wards for the purpose of elections as provided in Section 3-2 of the Charter. The plan shall immediately be transmitted to the Randolph County Board of Elections.

(b) Notwithstanding G.S. 163-294.2, the filing period for Mayor and City Council for the 1997 municipal election shall open at 12:00 noon on the business day after the plan required by subsection (a) of this section is adopted and shall close at 12:00 noon on the third Friday thereafter.

Section 6. (a) From and after the effective date of the Charter, the citizens and property in the City of Trinity shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the City shall obtain from Randolph County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the City shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The City may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 309

CHAPTER 45

AN ACT TO ALLOW THE CITY OF CHARLOTTE TO ISSUE TICKETS FOR OVERTIME PARKING ON CITY STREETS.

The General Assembly of North Carolina enacts:

Section 1. Chapter VI, Subchapter A, Article II of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, is amended by adding a new section:

"Section 6.25. Overtime Parking. The City Council may adopt ordinances which provide that each hour a vehicle remains illegally parked in an on-street parking space is a separate offense and the violator may be given a ticket for each offense."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 531

CHAPTER 46

AN ACT TO INCREASE THE SIZE OF THE PITT COUNTY ABC BOARD FROM THREE TO FIVE MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the local alcoholic beverage control board regulating the sale of alcoholic beverages in

Pitt County is increased from three members to five members. To provide for the transition from three to five members, the Pitt County Board of Commissioners shall appoint two new members with terms to coincide with the terms of the two present members whose terms expire on June 30, 1998, and June 30, 1999.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 583

CHAPTER 47

AN ACT TO INCREASE THE MEMBERSHIP OF THE CITY OF KINGS
MOUNTAIN LOCAL ALCOHOLIC BEVERAGE CONTROL BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. -- A local ABC board shall consist of three five members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman."

Section 2. Of the two members added pursuant to Section 1 of this act, one member shall be appointed for a term to expire on March 31, 1998, and one member shall be appointed for a term to expire on March 31, 1999, thereafter terms shall be for three years.

Section 3. This act applies to the City of Kings Mountain only.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day May, 1997.

Became law on the date it was ratified.

H.B. 636

CHAPTER 48

AN ACT TO ALLOW THE TOWN OF MANTEO TO REGULATE
CERTAIN ACTIVITIES IN WATERWAYS ADJACENT TO THE
TOWN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-176.2 reads as rewritten:

"§ 160A-176.2. *Ordinances effective in Atlantic Ocean.*

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and

other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Cape Carteret, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Long Beach, Manteo, Nags Head, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, Wrightsville Beach, and Yaupon Beach, and the City of Southport only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 649

CHAPTER 49

AN ACT ABOLISHING THE OFFICE OF CORONER IN CHEROKEE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The office of Coroner in Cherokee County is abolished.

Section 2. Chapter 152 of the General Statutes is not applicable in Cherokee County.

Section 3. This act shall become effective upon the expiration of the term of the current coroner in Cherokee County.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 851

CHAPTER 50

AN ACT TO ESTABLISH A NO-WAKE ZONE FOR THE TOWN OF CAPE CARTERET AND AREAS WITHIN THE TOWN'S EXTRATERRITORIAL PLANNING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to operate a vessel at greater than a no-wake speed in the waters east of the Route 58 bridge within the corporate limits of the Town of Cape Carteret and the Town's extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes. No-wake speed is idle speed or a slow speed creating no appreciable wake.

Section 2. With regard to marking the no-wake speed zone established in Section 1 of this act, the Town of Cape Carteret or its designee may place and maintain the markers in accordance with the Uniform Waterway Marking System and any supplementary standards for that system adopted by the Wildlife Resources Commission. All markers of the no-wake speed zone must be buoys or floating signs placed in the water and must be sufficient in number and size so as to give adequate warning of the no-wake speed zone to vessels approaching from various directions.

Section 3. This act is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes.

Section 4. Violation of this act is a Class 3 misdemeanor.

Section 5. This act is effective when it becomes law and is enforceable after markers complying with Section 2 of this act are placed in the water.

In the General Assembly read three times and ratified this the 12th day of May, 1997.

Became law on the date it was ratified.

H.B. 314

CHAPTER 51

AN ACT ABOLISHING THE VACANT OFFICE OF CORONER IN ROBESON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The office of coroner in Robeson County is abolished.

Section 2. Chapter 152 of the General Statutes is not applicable to Robeson County.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of May, 1997.

Became law on the date it was ratified.

S.B. 677

CHAPTER 52

AN ACT TO REPEAL THE ACT ESTABLISHING A SUPPLEMENTARY PENSION FUND FOR FIREMEN IN THE CITY OF ALBEMARLE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 102 of the 1957 Session Laws, as amended by Chapter 589 of the 1963 Session Laws and Chapter 606 of the 1967 Session Laws, is repealed.

Section 2. All funds held by the Trustees of the Albemarle Supplementary Pension Fund are transferred to the Board of Trustees of the Albemarle Firemen's Relief Fund to be held and administered as provided in Article 84 of Chapter 58 of the General Statutes.

Section 3. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law on the date it was ratified.

S.B. 151

CHAPTER 53

AN ACT TO CLARIFY THE DUTY OF AN OWNER, OPERATOR, OR OTHER RESPONSIBLE PARTY OF AN INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE TO NOTIFY THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OF THE EXISTENCE OF THE SITE, TO REQUIRE

OWNERS, OPERATORS, AND OTHER RESPONSIBLE PARTIES TO FURNISH INFORMATION REGARDING THE SITE, AND TO SIMPLIFY THE INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE INVENTORY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.1 reads as rewritten:

"§ 130A-310.1. Identification, inventory, and monitoring of inactive hazardous substance or waste disposal ~~sites~~; duty of owners, operators, and responsible parties to provide information and access; remedies.

(a) ~~Within six months of July 1, 1987, the~~ The Department shall develop and implement a program for locating, cataloguing, and monitoring all inactive hazardous substance or waste disposal sites in North Carolina. The Secretary shall compile and maintain an inventory of all such inactive hazardous substance or waste disposal sites based on information submitted by owners, operators, and responsible parties, and on data obtained directly by the Secretary. The inventory shall include Secretary shall maintain records of any evidence of contamination to the air, surface water, groundwater, surface or subsurface soils, or waste ~~streams~~. streams for inventoried sites. The inventory shall indicate records shall include all available information on the extent of any actual damage or potential danger to public health or to the environment resulting from such the contamination.

(b) ~~Within six months of July 1, 1987, the~~ The Commission shall develop and make available a format and checklist for submission of data relevant to inactive hazardous substance or waste disposal sites. Within 90 days ~~thereafter, each~~ of the date on which an owner, operator, or responsible party knows or should know of the existence of an inactive hazardous substance or waste disposal site, the owner, operator, or responsible party shall submit to the Secretary all such site data as that is known or readily available to him, the owner, operator, or responsible party. The owner, operator, or responsible party shall certify under oath that, to the best of his knowledge and belief, such the data is complete and accurate.

(c) Whenever the Secretary determines that there is a release, or substantial threat of a release, into the environment of a hazardous substance from an inactive hazardous substance or waste disposal site, the Secretary may, in addition to any other powers he may have, order any responsible party to conduct such any monitoring, testing, analysis, and reporting as that the Secretary deems reasonable and necessary to ascertain the nature and extent of any hazard posed by the site. Written notice of any order issued pursuant to this section shall be given to all persons subject to the order as set out in G.S. 130A-310.3(c). The Secretary, prior to the entry of any such order, shall solicit the cooperation of the responsible party.

(d) If a person fails to submit data as required in subsection (b) of this section or violates the requirements or schedules in an order issued pursuant to subsection (c) of this section, the Secretary may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior

court of the county where the violation occurred or where a defendant resides.

(e) Whenever a person ordered to take any action pursuant to this section is unable or fails to do so, or if the Secretary, after making a reasonable attempt, is unable to locate any responsible party, the Secretary may take such the action. The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, subject to a later action for reimbursement pursuant to G.S. 130A-310.7. The provisions of subdivisions (a)(1) to (a)(3) of G.S.130A-310.6 shall apply to any action taken by the Secretary pursuant to this section.

(f) Upon reasonable notice, the Secretary may require any person to furnish to the Secretary any information, document, or record in that person's possession or under that person's control that relates to:

- (1) The identification, nature, and quantity of material that has been or is generated, treated, stored, or disposed of at an inactive hazardous substance or waste disposal site or that is transported to an inactive hazardous substance or waste disposal site.
- (2) The nature and extent of a release or threatened release of a hazardous substance or hazardous waste at or from an inactive hazardous substance or waste disposal site.
- (3) Information relating to the ability of a person to pay for or to perform a cleanup.

(g) A person who is required to furnish any information, document, or record under subsection (f) of this section shall either allow the Secretary to inspect and copy all information, documents, and records or shall copy and furnish to the Secretary all information, documents, and records at the expense of the person.

(h) To collect information to administer this Part, the Secretary may subpoena the attendance and testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information that the Secretary deems necessary. Witnesses shall be paid the same fees and mileage that are paid to witnesses in proceedings in the General Court of Justice. In the event that a person fails to comply with a subpoena issued under this subsection, the Secretary may seek enforcement of the subpoena in the superior court in any county where the inactive hazardous substance or waste disposal site is located, in the county where the person resides, or in the county where the person has his or her principal place of business.

(i) A person who owns or has control over an inactive hazardous substance or waste disposal site shall grant the Secretary access to the site at reasonable times. If a person fails to grant the Secretary access to the site, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of May, 1997.

Became law upon approval of the Governor at 12:45 p.m. on the 16th day of May, 1997.

H.B. 1033

CHAPTER 54

AN ACT TO GIVE OUT-OF-STATE BANKS TWO MORE YEARS TO ESTABLISH AND MAINTAIN A DE NOVO BRANCH OR A BRANCH THROUGH ACQUISITION PURSUANT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-224.14(c) reads as rewritten:

"(c) Prior to June 1, ~~1997~~, 1999, an out-of-state bank may establish and maintain a de novo branch or may establish and maintain a branch through acquisition of a branch if:

- (1) In the case of a de novo branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain de novo branches in that state under substantially the same terms and conditions as herein set forth; and
- (2) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms and conditions as herein set forth."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law upon approval of the Governor at 12:46 p.m. on the 16th day of May, 1997.

H.B. 59

CHAPTER 55

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~March 20, 1996~~, January 1, 1997, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. Notwithstanding Section 1 of this bill, amendments to sections 101(b), 104, and 877 of the Internal Revenue Code as enacted as of January 1, 1997, and any other amendments to the Internal Revenue Code enacted in 1996 that increase North Carolina taxable income for the tax year 1996, become effective for taxable years beginning on or after January 1, 1997.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of May, 1997.

Became law upon approval of the Governor at 12:46 p.m. on the 16th day of May, 1997. Approved 12:46 p.m. this 16th day of May, 1997.

H.B. 954

CHAPTER 56

AN ACT TO AMEND EXISTING LAW PERTAINING TO SESSIONS OF THE SUPREME COURT.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected by the qualified voters of the State for terms of eight years. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law upon approval of the Governor at 12:47 p.m. on the 16th day of May, 1997.

S.B. 16

CHAPTER 57

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive ~~Probation and Parole Supervision~~. This program shall provide intensive supervision for ~~probationers~~ probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive ~~probation and parole supervision~~ program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)."

Section 2. G.S. 15A-1340.11 reads as rewritten:**"§ 15A-1340.11. Definitions.**

The following definitions apply in this Article:

- (1) Active punishment. -- A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.
- (2) Community punishment. -- A sentence in a criminal case that does not include an active punishment or an intermediate punishment.
- (3) Day-reporting center. -- A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.
- (4) ~~Electronic monitoring. -- A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.~~
- (4a) House arrest with electronic monitoring. -- Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.
- (5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive Probation Supervision Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.
- (6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
 - a. Special probation as defined in G.S. 15A-1351(a).
 - b. Assignment to a residential program.
 - c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.
 - d. Intensive probation.
 - e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

- (7) Prior conviction. -- A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:
- In the district court, and the person has not given notice of appeal and the time for appeal has expired; or
 - In the superior court, regardless of whether the conviction is on appeal to the appellate division; or
 - In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,
- regardless of whether the crime was committed before or after the effective date of this Article.
- (8) Residential program. -- A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Section 3. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

- (1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.
- (2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.
- (3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).
- ~~(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.~~

- (3b) Submit to supervision by officers assigned to the Intensive Probation Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.
- (3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.
- (4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.
- (5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).
- (6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.
- (7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.
- (8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such

illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

- (8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.
- (9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.
- (10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 4. G.S. 15A-1343.2 reads as rewritten:

"§ 15A-1343.2. *Special probation rules for persons sentenced under Article 81B.*

(a) *Applicability.* -- This section applies only to persons sentenced under Article 81B of this Chapter.

(b) *Purposes of Probation for Community and Intermediate Punishments.* -- The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) *Probation Caseload Goals.* -- It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) *Lengths of Probation Terms Under Structured Sentencing.* -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

- (1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
- (2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
- (3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
- (4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to community punishment to:

- (1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;
- (2) Report to the offender's probation officer on a frequency to be determined by the officer; or
- (3) Submit to substance abuse assessment, monitoring or treatment.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to intermediate punishment to:

- (1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;
- (2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically;
- (3) Submit to substance abuse assessment, monitoring or treatment; or
- (4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first

determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. -- For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

Section 5. G.S. 7A-771(5) reads as rewritten:

"(5) 'Targeted offenders' means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

Section 6. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(e) Prohibited Conditions. -- The Commission shall not impose community service as a condition of post-release supervision."

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law upon approval of the Governor at 12:48 p.m. on the 16th day of May, 1997.

H.B. 203

CHAPTER 58

AN ACT TO SUPPLEMENT CLARK'S CALENDAR, WHICH MAY BE INTRODUCED IN EVIDENCE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-48 reads as rewritten:

"§ 8-48. *Clark's Calendar; proof of dates.*

(a) In any controversy or inquiry in any court or before any fact finding board, commission, administrative agency or other body, where it becomes necessary or pertinent to determine any information which may be established by reference to a calendar for any year between the years ~~one thousand seven hundred and fifty-three~~ 1753 A.D. and ~~two thousand and two, anno domini, 2002 A.D.,~~ inclusive, it is permissible to introduce in evidence 'Clark's Calendar, a Calendar Covering 250 Years, 1753 A.D. to 2002 A.D.,' as supplemented, copyrighted, 1940, by E. D. Clark, Entry: Class AA, Number ~~three hundred and twenty-eight thousand five hundred and seventy-three,~~ 328,573, Copyright Office of the United States of America, Washington, or any reprint of ~~said one thousand nine hundred and forty the 1940~~ edition certified by the Secretary of State to be an accurate copy ~~thereof,~~ of it, and such the calendar or reprint, when so introduced, shall be prima facie evidence that the information disclosed by ~~said the~~ calendar or reprint ~~thereof~~ is true and correct.

(b) The Secretary of State shall prepare and publish a perpetual calendar similar to Clark's Calendar covering years beginning with 2003 A.D. The perpetual calendar published by the Secretary of State shall be admissible in

evidence to the same degree and in the same manner as Clark's Calendar for years beginning with 2003."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law upon approval of the Governor at 12:48 p.m. on the 16th day of May, 1997.

S.B. 428

CHAPTER 59

AN ACT TO CREATE THE BUTNER PLANNING COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. The catch line of Part 1A of Article 6 of Chapter 122C reads as rewritten:

"Part 1A. Butner Advisory Planning Council."

Section 2. G.S. 122C-412 reads as rewritten:

"§ 122C-412. Butner Advisory Planning Council; created.

(a) ~~There is created a Butner Advisory Planning Council to consist of seven members, to be elected by the residents of the territorial jurisdiction established by G.S. 122C-408(a), at a nonpartisan election administered by the Granville County Board of Elections at the general election on November 5, 1996, appointed in accordance with this section.~~

~~(b) Members of the Butner Advisory Council shall be elected at large, and the election shall be held in accordance with all applicable federal and State constitutional and statutory provisions, including the Voting Rights Act of 1965. For the purpose of elections under this Part, the jurisdiction shall be considered a city under Chapters 160A and 163 of the General Statutes. In accordance with North Carolina law, a candidate for the Butner Advisory Council must be a resident of the territorial jurisdiction established by G.S. 122C-408(a).~~

~~(c) The candidates for the Butner Advisory Council shall file their notices of candidacy with the Granville County Board of Elections not earlier than 12:00 noon on the first Friday in July and not later than 12:00 noon on the first Friday in August. Absentee voting by qualified voters residing in the territorial jurisdiction shall be in accordance with G.S. 163-302.~~

~~(d) In 1996, the four candidates receiving the highest number of votes shall be elected for terms of five years, and the three candidates receiving the next highest numbers of votes shall be elected for terms of three years. In 1999, and biennially thereafter, the members whose terms expire shall be elected to four-year terms.~~

~~(e) The Chairman of the Butner Advisory Council shall be elected from among its members and shall serve at the pleasure of the council.~~

~~(f) The Butner Advisory Council shall comply with the applicable and relevant provisions of Parts 1, 2, and 3 of Article 5 of Chapter 160A of the General Statutes with respect to the filling of vacancies and the organization and procedures of the council as if it were a city.~~

~~(g) The Butner Planning Council shall consist of seven members, three appointed by the Secretary and four appointed by the Board of~~

Commissioners of Granville County. All members shall reside within the Camp Butner reservation.

(h) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, one appointment by the Secretary and one appointment of the Board of Commissioners of Granville County shall be for one-year terms, one appointment by the Secretary and one appointment of the Board of Commissioners of Granville County shall be for two-year terms, and one appointment by the Secretary and two appointments of the Board of Commissioners of Granville County shall be for three-year terms. Thereafter, all terms shall be for three years.

(i) The Butner Planning Council shall hold an annual public meeting for receiving public nominations to be forwarded to the Secretary and the Board of County Commissioners of Granville County for their consideration for appointment to the Council.

(j) Members of the Butner Planning Council may be removed for cause by the appointing authority.

(k) Members of the Butner Planning Council shall receive reimbursement for travel, per diem, and subsistence in accordance with G.S. 138-5. Expenses of the Butner Planning Council shall be paid by the Department. The Secretary of Human Resources shall ensure that the Butner Planning Council has adequate resources and support to accomplish its duties.

(l) The Butner Planning Council shall elect a chairman and a vice-chairman from its membership for one-year terms. The Council shall elect a clerk for a one-year term.

(m) The initial meeting of the Butner Planning Council shall be called by the Secretary. The Council shall establish a regular meeting schedule that provides for at least quarterly meetings. Special meetings may be called by the Secretary, the chairman, or upon the written request of two members.

(n) The Butner Planning Council shall adopt rules for its procedures."

Section 3. G.S. 122C-412.1(a) reads as rewritten:

"§ 122C-412.1. Butner ~~Advisory~~ Planning Council; powers.

(a) The Butner ~~Advisory~~ Planning Council may advise the Secretary of Human Resources, through resolutions adopted by the council, on the operations of the Camp Butner Reservation and the concerns of the residents of the Camp Butner Reservation in connection with the exercise of the powers granted to the Secretary pursuant to G.S. 122C-403."

Section 4. G.S. 122C-412.2 reads as rewritten:

"§ 122C-412.2. Butner ~~Advisory~~ Planning Council; planning responsibility.

The Butner ~~Advisory~~ Planning Council shall, in consultation with the Department of Human Resources, the Community Assistance Division of the Department of Commerce, the Institute of Government, and other State and local agencies, prepare a long-range plan for the future development of the Camp Butner Reservation. This plan shall provide a blueprint for the development of the Reservation and the adjoining areas of Granville, Durham, and Person Counties and shall consider issues such as:

(1) The possible incorporation of a municipality on the Camp Butner Reservation;

- (2) The provision of housing, public safety services, water and sewer services, school facilities, and park and recreational services for the increasing Butner population;
- (3) The possible transfer of State-owned property for the future development in and around Butner;
- (4) The growth and development of business and industrial areas within the Camp Butner Reservation, including planning and zoning issues; and
- (5) How to maximize the utility of the Camp Butner Reservation to the State of North Carolina as a site for future State facilities and still meet the needs and improve the quality of life for the residents of Butner.

Copies of the long-range plan shall be submitted to the Secretary of Human Resources, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and to each member of the General Assembly representing the area no later than December 31, 1998. The Department of Human Resources, through the Butner Town Manager, shall provide necessary financial and personnel support for the preparation of this plan."

Section 5. G.S. 122C-403 reads as rewritten:

"§ 122C-403. *Secretary's authority over Camp Butner reservation.*

The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

- (1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.
- (2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.
- (3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3A, 3B, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply. The Secretary may appoint the Butner Advisory Planning Council as to act like a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, the Butner Advisory Planning Council shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388.
- (4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the Butner

Advisory Planning Council as the planning agency for the reservation.

- (5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.
- (6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.
- (7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.
- (8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.
- (9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Butner Town Manager who shall be hired upon the recommendation of the Butner Advisory Planning Council and shall be assigned to the Office of the Secretary of Human Resources. The Butner Advisory Planning Council shall submit the names of three candidates for the position of Butner Town Manager to the Secretary of Human Resources and the Secretary shall select one of the candidates. The candidates shall meet the qualifications set by the State Personnel Commission for the position. The Butner Town Manager shall serve at the pleasure of the Secretary. The Secretary shall, through the Butner Town Manager, provide all necessary administrative assistance to the council in carrying out its duties.

(10) Adopt rules to carry out the purposes of this Article."

Section 6. G.S. 122C-405 reads as rewritten:

"§ 122C-405. *Procedure applicable to rules.*

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the Butner Advisory Planning Council shall conduct the hearing."

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law upon approval of the Governor at 12:49 p.m. on the 16th day of May, 1997.

S.B. 98

CHAPTER 60

AN ACT TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.62. Nature of tax.

This Article imposes a tax on motor fuel to provide revenue for the State's transportation needs and for the other purposes listed in Part 7 of this Article. The tax is collected from the supplier or importer of the fuel because this method is the most efficient way to collect the tax. The tax is designed, however, to be paid ultimately by the person who consumes the fuel. The tax becomes a part of the cost of the fuel and is consequently paid by those who subsequently purchase and consume the fuel."

Section 2. G.S. 105-449.65(a)(5), as repealed by Section 3 of Chapter 647 of the 1995 Session Laws (Reg. Sess. 1996), is reenacted and G.S. 105-449.65, with the reenactment, reads as rewritten:

"§ 105-449.65. List of persons who must have a license.

(a) License. -- A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A refiner.
- (2) A supplier.
- (3) A terminal operator.
- (4) An importer.
- (5) ~~An exporter, if the Secretary imposes this requirement by rule.~~
exporter.
- (6) A blender.
- (7) A motor fuel transporter.
- (8) A bulk-end user of undyed diesel fuel.
- (9) A retailer of undyed diesel fuel.

(b) Multiple Activity. -- A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is not required to obtain a separate license for any other activity for which a license is required and is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive ~~supplier~~ supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

Section 3. G.S. 105-449.66 reads as rewritten:

"§ 105-449.66. *Types of importers; restrictions on who can get a license as an importer.*

(a) Types. -- An applicant for a license as an importer must indicate the type of importer license sought. The types of importers are as follows:

- (1) Bonded importer. -- A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:

- a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.
- b. The supplier of the fuel is not an elective supplier.
- c. The supplier of the fuel is not a permissive supplier.

- (2) Occasional importer. -- An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:

- a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
- b. A bulk-end user that is not a distributor, user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.
- c. A distributor that imports motor fuel for use in a race car.

- (3) Tank wagon importer. -- A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.

(b) Restrictions. -- A person may not be licensed as more than one type of importer. ~~A person who is a bulk-end user and is not also a distributor may not be licensed as a bonded importer. A person who is a bulk-end user and is not also a distributor may be licensed as an occasional importer with the restriction that the person acquire motor fuel for import only from an elective supplier or a permissive supplier or from a bulk plant. A bulk-end user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A bulk-end user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A bulk-end user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer.~~

Section 4. G.S. 105-449.67 reads as rewritten:

"§ 105-449.67. *List of persons who may obtain a license.*

(a) License. -- ~~A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:~~

- (1) ~~A distributor.~~
- (2) ~~A permissive supplier.~~
- (3) ~~An exporter.~~

(b) ~~Effect on Exports. -- An exporter license or a distributor license authorizes the license holder to pay the destination state tax on motor fuel purchased for export instead of paying this State's tax on the fuel. An~~

~~unlicensed exporter or unlicensed distributor must pay this State's tax on motor fuel purchased for export.~~

~~(c) Multiple Activity. -- A person who is licensed as a distributor is considered to have a license as an exporter.~~

A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:

(1) A distributor.

(2) A permissive supplier."

Section 5. G.S. 105-449.72 reads as rewritten:

"§ 105-449.72. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.

(a) Initial Bond. -- An applicant for a license as a refiner, a terminal operator, a supplier, an importer, ~~an exporter~~, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

(1) For an applicant for a license as any of the following, the amount is two million dollars (\$2,000,000):

- a. A refiner.
- b. A terminal operator.
- c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
- d. A bonded importer.
- e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than two hundred fifty thousand dollars (\$250,000):

- a. A supplier that is a fuel alcohol provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.
- b. An occasional importer.
- c. A tank wagon importer.
- d. A distributor.
- e. ~~An exporter.~~

(3) For an applicant for a license as a blender, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars (\$2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.

(b) Multiple Activity. -- An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under all the activities. A bond for these combined activities

may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

(c) Adjustment to Bond. -- When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the license holder, however, may not exceed the limits set in subdivision (a)(2) of this section."

Section 6. G.S. 105-449.77(b) reads as rewritten:

"(b) Supplier Lists. -- The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed distributors, and licensed exporters to each licensed supplier. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed supplier.

The Secretary must give a list of licensed suppliers to each licensed distributor, licensed exporter, and licensed importer. The Secretary must also give a list of licensed suppliers to each unlicensed distributor ~~or unlicensed exporter~~ that asks for a copy of the list. The list must state the name, account number, and business address of each supplier on the list and must indicate whether the supplier is an elective supplier, a permissive supplier, or an in-State-only supplier. The Secretary must send an annual update of the list to each licensed distributor, licensed exporter, and licensed importer, and to each unlicensed distributor ~~or unlicensed exporter~~ that requested a copy of the list."

Section 7. G.S. 105-449.82(c) reads as rewritten:

"(c) Terminal Rack Removal. -- The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. The liability for the tax at the motor fuel rate applies when the Department assesses the unlicensed exporter for the tax."

Section 8. G.S. 105-449.87(c) reads as rewritten:

"(c) Imputed Knowledge. -- ~~An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section unless the end seller~~

~~delivered the fuel into a storage facility that meets one of the following requirements:~~

- ~~(1) It contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.~~
- ~~(2) It is marked as follows with the phrase "Dyed Diesel", "For Nonhighway Use", or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle:~~
 - ~~a. The storage tank of the storage facility is marked if the storage tank is visible.~~
 - ~~b. The fillcap or spill containment box of the storage facility is marked.~~
 - ~~c. The dispensing device that serves the storage facility is marked.~~

~~An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."~~

Section 9. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.

(a) Exempt Cards at Rack. -- When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.

(b) Exempt Cards at Retail. -- A supplier that issues to, or authorizes another person to issue to, another person a credit card or an access code that enables the person to buy motor fuel at retail without paying the tax on the fuel has a duty to determine if the person is exempt from the tax. A supplier is liable for tax due on motor fuel purchased at retail by use of a credit card or an access code issued to a person who is not exempt from the tax.

(c) Card Holder. -- A person to whom an exempt card or exempt access card is issued for use at a terminal or at retail is liable for any tax due on fuel purchased with the card for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

Section 10. G.S. 105-449.89 reads as rewritten:

"§ 105-449.89. Removals by out-of-state bulk-end user.

An out-of-state bulk-end user may remove motor fuel from a terminal in this State for use in the state in which the bulk-end user is located as follows:

- (1) Upon payment to the supplier of tax on the motor fuel at the motor fuel rate.

- (2) ~~Upon payment to the supplier of destination, state tax on the motor fuel, if the bulk-end user acquires the fuel from a supplier who, with respect to the destination state of the fuel, is either a permissive supplier or an elective supplier and therefore collects the destination state tax on the fuel.~~

An out-of-state bulk-end user may not remove motor fuel from a terminal in this State for use in the state in which the bulk-end user is located unless the bulk-end user is licensed under this Article as an exporter. An out-of-state bulk-end user that is not licensed under this Article may remove motor fuel from a bulk plant in this State."

Section 11. G.S. 105-449.90 reads as rewritten:

"§ 105-449.90. *When tax return and payment are due.*

(a) Filing Periods. -- The excise tax imposed by this Article is payable when a return is due. A return is due annually, quarterly, or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 1st 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. -- A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

(c) Quarterly Filers. -- A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.

(d) Monthly Filers on 22nd. -- The following persons must file a monthly return by the 22nd of each month:

- (1) A refiner.
- (2) A supplier.
- (3) A bonded importer.
- (4) A blender.
- (5) A tank wagon importer.
- (6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
- (7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 1st, 3rd. -- An occasional importer must file a monthly return by the 1st third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in

another state and the supplier of the fuel is an elective supplier or a permissive supplier."

Section 12. G.S. 105-449.91 reads as rewritten:

"§ 105-449.91. *Remittance of tax to supplier.*

(a) Distributor. -- A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. -- An exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. ~~A licensed exporter that is also licensed in the destination state has the right to defer the remittance of tax to the supplier until the date set by the law of the destination state of the fuel. The time when an unlicensed exporter, or a licensed exporter that is not also licensed in the destination state, must remit tax to a supplier is governed by the terms of the contract between the supplier and the exporter.~~ The time when an exporter must remit tax to a supplier is governed by the law of the destination state of the exported motor fuel.

(c) Importer. -- A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. -- The method by which a distributor, ~~an~~ a licensed exporter, or a licensed importer must remit tax to a supplier is governed by the terms of the contract between the supplier and the distributor, exporter, or licensed importer and the supplier. G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

Section 13. G.S. 105-449.92(b) reads as rewritten:

"(b) Effect of Notice. -- A supplier that sells motor fuel to a distributor ~~or an exporter~~ after receiving notice from the Secretary that the Secretary has cancelled the distributor's ~~or exporter's~~ license is jointly and severally liable with the distributor ~~or exporter~~ for any tax due on motor fuel the supplier sells to the distributor ~~or exporter~~ after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor ~~or unlicensed exporter~~ after the supplier receives notice from the Secretary that the Secretary has issued another license to the ~~distributor or exporter.~~ distributor."

Section 14. G.S. 105-449.96 reads as rewritten:

"§ 105-449.96. *Information required on return filed by supplier.*

A return of a supplier must list all of the following information and any other information required by the Secretary:

- (1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier.

- (2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving distributor, exporter, or importer, the fuel, terminal code, and carrier.
- (3) The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving distributor or exporter, the fuel, terminal code, destination state, and carrier.
- (4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving distributor, exporter, or importer, the fuel, terminal code, and carrier.
- (5) The number of gallons of motor fuel the supplier sold during the month to any of the following, sorted by type of fuel, exempt entity, person receiving distributor, the fuel, terminal code, and carrier:
 - a. A governmental unit whose use of fuel is exempt from the tax.
 - b. A licensed distributor or importer that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor, distributor or importer.
 - c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.
- (6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers."

Section 15. G.S. 105-449.97 reads as rewritten:

"§ 105-449.97. *Deductions and discounts allowed a supplier when filing a return.*

(a) Taxes Not Remitted. -- When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax any of the following license holders owes the supplier but failed to remit to the supplier:

- (1) A licensed distributor.
- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) Repealed by Session Laws 1995, c. 647, s. 32.

A supplier is not liable for tax a license holder listed in this subsection owes the supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the payment to the Secretary.

(b) Administrative Discount. -- A supplier that files a timely return may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel.

(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor ~~or unlicensed exporter~~ or to the bulk-end user, the

retailer, or user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier.

(d) Taxes Paid on Exempt Retail Sales. -- When filing a return, a supplier that issues or authorizes the issuance of an exempt card or an exempt access code to a person that enables the person to buy motor fuel at retail without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt retail card or code. The amount of excise tax imposed on fuel purchased at retail with an exempt retail card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

Section 16. G.S. 105-449.98 reads as rewritten:

"§ 105-449.98. Duties of supplier concerning payments by distributors, exporters, and importers.

(a) **As Fiduciary.** -- A supplier has a fiduciary duty to remit to the Secretary the amount of tax paid to the supplier by a licensed distributor, licensed exporter, or licensed importer. A supplier is liable for taxes paid to the supplier by a licensed distributor, licensed exporter, or licensed importer.

(b) ~~Notification to Distributor or Exporter.~~ **Notice of Fuel Received.** -- A supplier must notify a licensed ~~distributor or licensed exporter~~ distributor, a licensed exporter, or a licensed importer that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the ~~licensed distributor or licensed exporter~~ license holder must remit to the supplier the amount of tax due on the fuel.

(c) ~~Notification~~ **Notice to Department.** -- A supplier of motor fuel at a terminal must notify the Department within 10 business days after a return is due of any licensed ~~distributors or licensed exporters~~ distributors, licensed exporters, or licensed importers that did not pay the tax due the supplier when the supplier filed the return. The ~~notification notice~~ must be transmitted to the Department in the form required by the Department.

(d) **Payment Application.** -- A supplier that receives a payment of tax from a ~~distributor or a licensed exporter~~ licensed distributor, a licensed exporter, or a licensed importer may not apply the payment to ~~debts~~ a debt that person owes the supplier for motor fuel purchased from the supplier."

Section 17. G.S. 105-449.105(a) reads as rewritten:

"(a) Exempt Fuel. -- A ~~distributor~~ person may obtain a refund of tax paid by the ~~distributor~~ person on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on motor fuel. A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary."

Section 18. G.S. 105-449.116 reads as rewritten:

"§ 105-449.116. Import confirmation number required for some imported motor fuel.

(a) Requirement. -- A bonded importer or an occasional importer that acquires motor fuel for import by transport truck from a supplier that is not an elective supplier or a permissive supplier, and therefore will not be acting as trustee for the remittance of tax to the State on behalf of the importer, must obtain an import confirmation number from the Secretary before importing the motor fuel. The importer must write the import confirmation number on the shipping document issued for the fuel. The importer must obtain a separate import confirmation number for each transport truck delivery of motor fuel into this State.

(b) Penalty. -- An importer that does not obtain an import confirmation number when required by this section is liable for a civil penalty. The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the transport truck is registered. The amount of the penalty depends on whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is the same as the amount for a first assessment under G.S. 105-449.115(f). For a second or subsequent assessment under this subsection, the penalty is the same as the amount for a second or subsequent assessment under G.S. 105-449.115(f). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

Section 19. G.S. 105-449.117 reads as rewritten:

"§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.

It is unlawful to use dyed diesel fuel for a highway use in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is ~~permitted~~ allowed under section 4082 of the Code. It is unlawful to use undyed diesel fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this Article has been paid. A person who operates on a highway a ~~highway vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section or contains other fuel on which the tax imposed by this Article has not been paid~~ violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed."

Section 20. G.S. 105-449.120(a)(3) reads as rewritten:

"(3) Willfully fails to pay a tax when due under this Article. ~~Article or under former Article 36 or 36A of this Chapter.~~ Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment."

Section 21. The catch line to G.S. 105-449.122 reads as rewritten:

"§ 105-449.122. Miscellaneous Equipment requirements."

Section 22. Part 6 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.123. Marking requirements for dyed diesel fuel storage facilities.

(a) Requirements. -- A person who is a retailer of dyed diesel fuel or who stores both dyed and undyed diesel fuel for use by that person or another person must mark the storage facility for the dyed diesel fuel as follows with the phrase 'Dyed Diesel', 'For Nonhighway Use', or a similar phrase that clearly indicates the diesel fuel is not to be used to operate a highway vehicle:

- (1) The storage tank of the storage facility must be marked if the storage tank is visible.
- (2) The fillcap or spill containment box of the storage facility must be marked.
- (3) The dispensing device that serves the storage facility must be marked.

(b) Exception. -- The marking requirements of this section do not apply to a storage facility that contains fuel used only in heating, drying crops, or a manufacturing process, and is installed in a manner that makes use of the fuel for any other purpose improbable."

Section 23. G.S. 105-449.133 reads as rewritten:

"§ 105-449.133. Bond or letter of credit required as a condition of obtaining and keeping license as alternative fuel provider, certain licenses.

(a) Who Must Have Bond. -- ~~An applicant~~ The following applicants for a license ~~as an alternative fuel provider~~ must file with the Secretary a bond or an irrevocable letter of credit ~~in an credit~~:

- (1) An alternative fuel provider.
- (2) A retailer or a bulk-end user that intends to store highway and nonhighway alternative fuel in the same storage facility.

(b) Amount. -- The amount of the bond is the amount that would be required if the fuel the applicant intended to provide or store was motor fuel rather than alternative fuel. An applicant that is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond or irrevocable letter of credit under that section for the combined amount.

A bond filed under this subsection must be conditioned upon compliance with this Article, be payable to the State, and be in the form required by the Secretary. The Secretary may require a bond issued under this subsection to be adjusted in accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor of motor fuel."

Section 24. G.S. 105-449.137(a) reads as rewritten:

"(a) Liability. -- A bulk-end user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a bulk-end user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article. Article on all other alternative fuel."

Section 25. G.S. 105-449.138 reads as rewritten:

"§ 105-449.138. Requirements for bulk-end users and retailers.

(a) Informational Return. -- A bulk-end user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. -- ~~A storage facility used by a bulk-end user or a retailer must be marked in a manner similar to that required for diesel fuel by G.S. 105-449.87(c) if the alternative fuel stored in the facility is to be used for a purpose other than to operate a highway vehicle.~~ A bulk-end user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a bulk-end user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 26. Sections 1, 19, and 20 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 1997.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

Became law upon approval of the Governor at 12:50 p.m. on the 16th day of May, 1997.

H.B. 516

CHAPTER 61

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF PUBLIC ROADS IN COLUMBUS COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or wild bird with a firearm on, from, or across the right-of-way of any public road or highway in Columbus County without first obtaining the written permission of the owner or lessee of the land abutting the road or the land across which the weapon is being discharged.

Section 2. Section 1 of this act does not apply to the owner or lessee of the real property. A hunter recovering dogs shall not be in violation of Section 1 of this act so long as all of the hunter's weapons remain in a motor vehicle.

Section 3. Violation of this act is a Class 3 misdemeanor.

Section 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 5. This act applies only to Columbus County.

Section 6. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law on the date it was ratified.

H.B. 532

CHAPTER 62

AN ACT TO DELETE CERTAIN OBSOLETE PROVISIONS AND MAKE CERTAIN TECHNICAL AMENDMENTS IN THE CHARTER OF THE CITY OF HENDERSON AND TO AUTHORIZE ENTRY INTO AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967 as amended on June 22, 1981, by ordinance under G.S. 160A-101, reads as rewritten:

"Section 4. Elective Officers - Enumerated; Conduct of Elections; Terms of Office, Vacancies. The elective officers of the city shall consist of a mayor, who shall be elected ~~on the first Tuesday in May at the time prescribed by the General Statutes~~ and biennially thereafter, by the qualified voters of the whole city, and two aldermen from each ward, whose term of office shall be two years. The City shall be divided into four (4) electoral districts or wards and the seats of the eight (8) City Aldermen shall be divided equally into four (4) 'ward seats' and four (4) 'at large seats', one each of which shall be apportioned to each of the electoral districts or wards (so that each Alderman with a 'ward seat' shall represent approximately the same number of persons); the qualified voters of each electoral district or ward shall vote for and elect candidates to the respective 'ward seats'; candidates for the 'at large seats' shall reside in and represent the districts according to the apportionment plan, but all candidates for 'at large seats' shall be voted for and elected by all of the qualified voters of the entire City. Except as otherwise herein provided, such elections shall be in conformity with the general law of the State governing municipal elections; and the term of office of such mayor and aldermen shall commence ~~at 4:00 o'clock in the afternoon on the first Monday in June following their election, at the time prescribed by the General Statutes.~~ A vacancy shall exist when an elective officer shall fail, without good cause, to qualify within 60 days after his election; shall die, resign, remove from the city, absent himself without just cause continuously for 60 days from the city; is convicted or submits to the charge of a felony, is judicially declared a lunatic, or is removed for cause."

Section 2. Section 5 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 5. ~~Same - Majority Vote Required for Election; Effect of Failure to Get Majority Vote. Except as otherwise provided, in all city elections, the candidate for each office receiving a majority of all votes cast~~

~~for such office shall be declared elected. In the event no candidate for any particular office shall receive a majority of the votes cast for such office, the candidate receiving the second highest number of votes cast for such office shall be entitled to require that a second election for such office be held between the two candidates receiving the highest numbers of the votes cast for such office. If the second high candidate desires a second election for such office, he shall file, in writing with the city clerk not later than 12:00 noon on the first Friday following the regular city election, a notice requesting that a second election be held.~~

~~If the city clerk shall receive a notice requesting a second election for any office, and the candidate filing such notice is entitled to a second election under the provisions of this Section, then the city clerk shall call such election to be held on the third Tuesday in May, and shall cause notice of such second election to be published at least once in a newspaper having general circulation in the city.~~

~~In all second elections held under authority of this section, the registration books used for the regular city election shall be used, and no new or additional registration shall be necessary; and, the election officials who conducted the regular city election shall conduct any second election, unless otherwise provided by action of the city council.~~

~~In the event a candidate for any office is entitled, under the provisions of this section to request a second election, and does not file the required notice in proper time as herein provided, then the candidate who received the highest number of votes cast for such office in the regular city election shall be declared elected.~~ City Elections. - Municipal elections in the City of Henderson shall continue to be conducted pursuant to the 'nonpartisan election and runoff election' method as described in the General Statutes, and the General Statutes shall continue to govern the registration of potential voters, the filing dates for candidates, the dates of the election and runoff election, the procedures to be followed in municipal elections, and the number of votes required before a candidate can call for a runoff or be declared elected."

Section 3. Section 6 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 4. Section 10 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 10. City Council - Power Generally; Organization; Mayor Pro Tempore; Oath of Office. All legislative powers of the city shall be vested in the city council and mayor. At the meeting held on the first Monday in June, organizational meeting of the council following each municipal election, or as soon thereafter as is practicable, the city council shall elect from its members a mayor pro tempore who shall hold his office during the pleasure of the city council.

The organization of the city council shall take place as provided in this Section notwithstanding the absence, death or refusal of one or more members to serve; provided, that at least a majority of the persons entitled to be members of the city council are present and take the prescribed oath of office. Any number entitled to take such oath who were not present at the

time fixed therefor may take the oath at any time. The council shall be judge of the election and qualification of its members."

Section 5. Section 11 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 11. Duty to Elect Certain City Officers, etc. The city council shall also elect at the meeting held pursuant to Section 10, or as soon thereafter as is practicable, a city clerk, a city ~~collector of revenue~~, director of finance, a city ~~treasurer~~, and a city attorney, ~~whose terms of office shall be provided for by ordinance~~, who shall be subject to such regulations and receive such compensation as the city council may determine, and shall hold their respective offices during the pleasure of the city council. ~~The city council shall have power to appoint or remove department heads in conformity with Section 9(j).~~"

Section 6. Section 17 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 7. Section 19 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 19. Salaries of Mayor and Councilmen. The salary of the mayor ~~shall be fixed by the city council at the meeting held the first Monday in June, or as soon thereafter as is practical. The~~ and the salary of the city council shall be fixed by the city council ~~to be payable monthly, at the time it adopts the annual budget for the city.~~"

Section 8. Section 22 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 22. ~~City Collector of Revenue. Director of Finance.~~ At the first meeting of the city council ~~held on the first Monday in June, after its qualification~~, or as soon thereafter as is practicable, the city council shall elect a city ~~collector of revenue~~ Director of Finance who shall serve at the pleasure of the city council and give bond in the amount in the amount of not less than twenty-five thousand dollars (\$25,000), as may be fixed by the city council for the faithful performance of his duties and for a proper accounting of all funds coming into his hands by virtue of his office, or coming into his possession in connection therewith, for which he may be responsible, such bond to be renewed annually by a new bond for such sum as may be determined by the city council, and shall receive such compensation for his services as is fixed by the city council.

The city council may combine the office of ~~collector of revenue~~ Director of Finance with any other office or offices that it sees fit, vesting in the person holding such combined offices the powers and duties of each position."

Section 9. Section 23 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 10. Section 27 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, as amended by Chapter 809 of the 1969 Session Laws, reads as rewritten:

"Section 27. City Council-Powers ~~Enumerated.~~ Enumerated Generally. The city council shall continue under existing laws to have power to make and provide for the execution of such ordinances for the city as they may deem proper not inconsistent with the laws of the land, and the city shall

have all the powers granted to municipalities by the general laws of the State as the same may now be or as hereafter enacted. In addition to the powers now or hereafter granted to municipalities under the general laws of the State, the city is specifically granted the following powers.

(a) To adopt an ordinance requiring the owners of property abutting sidewalks to keep the sidewalks clear at all times of ice, snow, dirt and debris.

~~(b) To require all railroad companies to maintain gates or watchmen at street crossings when deemed necessary unless such railroad has installed proper and fully approved automatic warning devices at such crossings as approved by the city council.~~

~~(c) To regulate and control the location of railroad tracks and to require railway companies of all kinds to construct at their own expense such bridges, underpasses, turnouts, culverts, crossings and other things as the city council may find necessary; to require by ordinance any railroad company to repair grade crossings in such manner as deemed by the city council to be necessary to the safety and convenience of the traveling public, and any ordinance adopted hereunder shall contain provisions establishing adequate notice and hearing procedures in accordance with due process of law.~~

(d) ~~(b)~~ To require that all property owners provide adequate drainage facilities to the end that their premises be kept free from standing water and permit the natural flow of water thereon to be taken care of, and that in case of failure on the part of such owner or owners, to provide the same, after due notice, to go upon their premises and construct the necessary facilities and charge the cost thereof against such premises so improved, such cost to constitute a lien upon such premises and be collected as in the case of taxes.

~~(e)~~ ~~(c)~~ To compromise suits for street and sidewalk assessments when the validity or collectibility of any such assessment is doubtful; provided, however, that no compromise settlement shall be made unless it is recommended by the city attorney, and unless such compromise settlement is approved by three-fourths vote of those present at the council meeting that passes on the proposal.

~~(f)~~ ~~(d)~~ The city council shall have the power to adopt an ordinance designating the officers of the city who shall be empowered to sign and countersign checks, drafts, warrants and vouchers for payment on behalf of the city.

~~(g)~~ ~~(e)~~ To discontinue water service for non-payment of either water charges or sewer charges or any other sanitation charge.

~~(h)~~ ~~(f)~~ To appropriate funds annually in its discretion, from any source of revenue other than funds derived from ad valorem property taxation, for the purpose of obtaining or aiding and encouraging the locating in or near the City of manufacturing, industrial, business, and commercial plants and enterprises, the advertising of the suitability of the City and the surrounding area and the advantages it has to offer, and for such other purposes as will, in the opinion of the city council, increase the population, taxable property values, and the general and material welfare of the City and the surrounding area. Expenditures for the ~~purpose~~ purposes herein authorized are hereby declared to be for a lawful public purpose. Provided, however, that nothing

herein shall prevent the appropriation of funds derived from ad valorem property taxation for any purpose so authorized by law.

(g) Upon receipt of a voluntary petition by any entity whose property is not subject to ad valorem property taxation under Part 1 or 4 of Article 4A of Chapter 160A of the General Statutes or any successor statutory provision, the city council may contract with that entity for that entity to pay for city utilities at different rates from those rates paid by other citizens or entities located within the city limits, provided that the different rates shall not become payable before the effective date of the annexation and shall not extend for more than five years from the effective date of the annexation.

(i) (h) The enumeration of particular powers by this Charter shall not be deemed or held to be exclusive, but in addition to the powers herein enumerated or implied, implied; the city, either through the city council, or through such other officers as may by law be provided, shall have and may exercise all other powers which under the Constitution and laws of the State, may be granted to cities.

(i) (i) No liability shall accrue to the city for the failure of the city or its officers and employees to perform any duty or exercise any power above enumerated."

Section 11. Section 31 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 31. Power to Convey Real and Personal Property, etc. The city council shall have the power at all times to sell any and all personal property of the city at private sale, without resorting to public sale. The city shall have the power at all times to sell any real property belonging to the city after having advertised the same once a week for four consecutive weeks in a newspaper published in the county; provided that before any bid shall be deemed accepted or any sale made, or title passed by virtue of such sale, such sale shall be confirmed by the city council and the council may in its discretion, refuse confirmation, and when so authorized, a deed for such real estate may be executed by the mayor and attested by the city clerk, with the corporate seal of the city attached; provided, however, this shall not apply to plots in the cemetery except as to the manner of execution of the deed. In the sale of real estate the city is authorized to execute deeds in the usual form and containing full covenants of warranty. Provided, however, nothing in this section prevents the city from selling real or personal property in any manner authorized by the General Statutes."

Section 12. Section 37 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 37. Assessment Procedure. In ordering street improvements without a petition and assessing the cost thereof, unless otherwise provided by this Charter, the city council shall comply with the procedure provided by Article 9, Chapter 160 of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof."

Section 13. Section 38 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 38. Effect. The effect of the act of levying assessments under authority of Sections 35 through 37 shall for all purposes be the same as if

the assessments were levied under authority of ~~Article 9, Chapter 160~~ of the General Statutes."

Section 14. Section 40 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 40. Enactment of Regulations. The city is authorized to adopt a building code, plumbing code, electrical code, zoning ordinance, subdivision ordinance, minimum housing code, laws authorizing abatement of nuisances under G.S. 160A-193 or any successor statute, condemnation of dilapidated structures ordinance, weeded lots ordinance, abandoned and junked motor vehicles ordinances, and mapped streets ordinance in accordance with Sections 45 through 50, and other similar regulatory codes not only for the area within the corporate limits as may be provided for in the General Statutes, but for any area within the city extraterritorial planning area as defined by Section 39."

Section 15. Section 42 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 42. Authority of Zoning Board of Adjustment. The board of adjustment of the city, appointed pursuant to ~~Section 160-178~~ of the General Statutes shall have the same power and authority within the city extraterritorial planning area as defined by Section 39 outside the corporate limits of the city as may now or hereafter be vested with such board for the area inside the corporate limits, and such board shall be constituted in accordance with the provisions of ~~Section 160-181.2~~ of the General Statutes."

Section 16. Section 43 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 43. Recording Subdivision Plat, Etc. (a) Platting Authority. ~~The board of aldermen~~ city council is hereby authorized to enact an ordinance regulating the subdivision of land as defined by this Article within the city or within the extraterritorial planning area and not located in any other municipality. In the event of land lying outside the city within the extraterritorial planning area and lying also within the subdivision control jurisdiction of another municipality, the jurisdiction of the city shall terminate at a boundary line equidistant from the corporate limits of the city and the corporate limits of the other municipality, unless such municipalities shall agree to writing upon a different boundary line based upon geographical features and existing or projected patterns of development within the area. ~~The legislative body~~ city council may, if it deems wise, decline to exercise its regulatory powers over any part of its extraterritorial jurisdiction which lies in another county, or which is separated from the municipality or from the remainder of the area subject to municipal jurisdiction by a river, inlet, sound, or other major physical barrier to urban growth; such decision shall not affect the validity of any subdivision regulations enacted for the remainder of the area over which the municipality has extraterritorial jurisdiction.

(b) Adoption of Ordinance; Procedure. Before the ~~board~~ city council shall adopt a subdivision control ordinance or any amendment thereto, it shall hold a public hearing, notice of which shall be given once a week for two successive calendar weeks in a newspaper published within ~~the city~~

Vance County, or if no newspaper is so published, by posting such notice at four public places in the city. The notice shall be published the first time, or posted, not less than 15 nor more than 25 days prior to the date fixed for the hearing.

(c) Approval of Subdivision Plats. If the board city council adopts an ordinance regulating the subdivision of land, no subdivision plat shall be filed or recorded until it shall have been submitted to and approved by the appropriate board designated for that ordinance and such approval entered in writing on the plat by the city clerk, provided a copy of such ordinance shall be filed with the Register of Deeds of Vance County. The register of deeds upon receipt of such ordinance shall not thereafter file or record a plat of a subdivision of land located within the territorial jurisdiction of the city as herein defined without the approval of such plat by the board. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the territorial jurisdiction of the city as herein defined. ~~The Clerk of Superior Court of Vance County shall not order or direct the recording of a plat where such recording would be in conflict with this Section.~~

(d) Subdivision Regulations. Prior to exercising the powers granted by this Article, the board city council shall by ordinance adopted pursuant to this Article adopt regulations governing the subdivision of land within its platting jurisdiction as defined in paragraph (a) of this Section. The ordinance shall require that at least a preliminary plan of every proposed subdivision shall be submitted for a study, recommendation, and tentative approval to the appropriate board ~~or to the planning board or commission designated in the ordinance.~~

The ordinance may provide for the orderly development of the city and its environs; for the coordination of streets within proposed subdivision with existing or planned streets or with other public facilities; for the dedication or reservations of rights of way or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding, and which shall create conditions essential to public health, safety, and general welfare.

The ordinance may include requirements for the final plat to show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the orderly development of subdivisions by regulating the construction of community service facilities, including water lines; sewer lines; street paving, curbing and guttering; and street drainage facilities in accordance with policies and standards established by the board city council under authority granted in Section 44 of this Charter and, to assure compliance with such requirements, the ordinance may require the posting of bond or other such method as shall offer guarantee of compliance.

Such ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever land is subdivided within its jurisdiction, within the definition of 'subdivision' in G.S. 160-226.6, the applicable provisions of the General Statutes.

(e) Effect of Plat Approval on Status of Dedications. The approval of a plat by the ~~board of aldermen~~ city council shall not be deemed to constitute or effect the acceptance by the city or the public of the dedication of any street or other ground, public utility line, or other public facility shown upon the plat.

However, ~~any municipal legislative body~~ the city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines or other public purposes, where such lands or facilities are located within its subdivision-regulation jurisdiction.

(f) Penalties for Transferring Lots in Unapproved Subdivisions. If the ~~board~~ city council adopts an ordinance regulating the subdivision of land as authorized by this Section, any person who, being the owner or agent of the owner of any land located within the platting jurisdiction of the city as defined by paragraph (a) of this Section, thereafter subdivides his land in violation of such ordinance or transfers or sells such land by reference to or by exhibition of or by other use of a plat showing a subdivision of such land before such plat has been approved by the appropriate board and recorded in the register of deeds' office, shall be guilty of a misdemeanor, and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The city, through the city attorney or other official designated by the ~~board~~ city council, may enjoin such transfer or sale by action for ~~injunction~~, injunction or seek to rescind the same.

(g) Definitions. For purposes of this Section, a 'subdivision' shall include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this Section:

- (1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the city as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two areas into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the city, as shown in its subdivision regulations."

Section 17. Section 44 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 44. Authority to Require Improvements to Comply With City Specifications. In addition to the authority granted by G.S. 160-226.3, the applicable provisions of the General Statutes, the city council is hereby authorized to provide for the more orderly development of subdivisions in the extraterritorial area by including in its subdivision regulation ordinance provisions requiring the following:

(a) that any streets proposed to be opened shall be graded and stabilized and adequate storm drainage facilities installed, all in accordance with city standards and specifications;

(b) that any streets proposed to be paved, and any curbs and gutters proposed to be constructed, shall be paved and constructed in accordance with city standards and specifications; and

(c) that any water or sewer lines proposed to be installed shall be installed and constructed in accordance with city standards and specifications."

Section 18. Section 47 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 47. Adoption of Official Map, Etc. Following the preparation of plats as required by Section 46, the city council may officially adopt a map or maps of planned new streets and highways, extensions, widenings, narrowings, or vacations of streets within the city and the extraterritorial area outside of its corporate boundaries. Before taking any such action, the council shall hold a public hearing thereon, notice of the time and place of which shall have been given once a week for two successive weeks in a newspaper published in ~~the city~~ Vance County, or if there be no newspaper published in the city, by posting such notice at four public places in the city and at four public places within the affected area outside of the corporate boundaries. Said notice shall be published or posted for the first time not less than 15 days prior to the date fixed for said hearing. Following adoption of such a map or maps, the council shall certify a copy to the Register of Deeds of Vance County, which copy shall be duly filed. The placing of any street or street line upon any official map or maps shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street or the taking of or acceptance of any land for street purposes."

Section 19. Section 52 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 20. Section 53 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Sec. 53. Procedure for Letting Contracts, etc. All purchases and contracts made by the city council shall be made, let, and executed according to the general laws of the State applicable thereto, as the same may be now or hereafter be enacted; provide, however, that contracts of the city involving more than one thousand dollars (\$1000.00) twenty thousand dollars (\$20,000) shall be in writing and G.S. 160-279 the applicable provisions of the General Statutes requiring contracts to be in writing shall control and govern only contracts of the city in excess of one thousand dollars (\$1,000.00), twenty thousand dollars (\$20,000)."

Section 21. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law on the date it was ratified.

H.B. 559

CHAPTER 63

AN ACT TO PROVIDE THAT THE TOWN OF SUNSET BEACH MAY REQUIRE ISSUANCE OF A BUILDING PERMIT FOR THE REPLACEMENT AND DISPOSAL OF ROOFING.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 381 of the 1993 Session Laws, as amended by Chapter 124 of the 1995 Session Laws and Chapter 732 of the 1995 Session Laws, reads as rewritten:

"Sec. 3. This act applies only to the Town of Sunset Beach and to Alamance, Cumberland, and Scotland Counties and the cities located in those counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law on the date it was ratified.

H.B. 791

CHAPTER 64

AN ACT AUTHORIZING THE DURHAM PUBLIC SCHOOLS TO DISPOSE OF CERTAIN REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-518, the Board of Education of the Durham Public Schools may convey to North Carolina Central University, with or without monetary consideration, all of its right, title, and interest to the Old Hillside High School school site located at 1900 Concord Street in Durham.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law on the date it was ratified.

H.B. 792

CHAPTER 65

AN ACT REPEALING SECTION 116 OF THE CHARTER OF THE CITY OF DURHAM CONCERNING THE INSPECTION OF CITY RECORDS IN THE PRESENCE OF THE CITY MANAGER AND THE CITY CLERK.

The General Assembly of North Carolina enacts:

Section 1. Section 116 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law on the date it was ratified.

H.B. 845

CHAPTER 66

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF PUBLIC ROADS IN GASTON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill with a firearm or other deadly weapon, or to attempt to hunt, take, or kill with a firearm or other deadly weapon, any wild animal or wild bird from, onto, or across the right-of-way of any public road, street, or highway.

Section 2. It is unlawful to discharge a firearm from, onto, or across the right-of-way of any public road, street, or highway.

Section 3. Violation of Section 1 or 2 of this act is a Class 3 misdemeanor.

Section 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 5. This act applies only to Gaston County.

Section 6. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law on the date it was ratified.

H.B. 391

CHAPTER 67

AN ACT TO ALLOW ALL RETIRED HIGH POINT FIREMEN TO RECEIVE PENSION BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. The first sentence of Section 3 of Chapter 877 of the 1957 Session Laws is rewritten to read:

"Any former full time member of the City of High Point Fire Department who receives retirement benefits pursuant to the provisions of the Local Governmental Employees' Retirement System is entitled to receive benefits under this Act."

Section 2. This act applies only to the City of High Point.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of May, 1997.

Became law on the date it was ratified.

H.B. 1107

CHAPTER 68

AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE MEMBERSHIP OF FACILITY AUTHORITIES AND ROOM

OCCUPANCY TAX ALLOCATIONS FOR CAPITAL IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-480.3(b) reads as rewritten:

"(b) Membership. -- An authority shall have eight or ~~13~~ 17 members. Members shall be chosen for terms as follows:

- (1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the ~~authority;~~ authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county;
- (2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the ~~authority;~~ authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county; and
- (3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:
 - a. ~~Two Four~~ members shall be appointed by the board of commissioners of that ~~county;~~ county, one of whom at the time of appointment is a resident of the municipality with the second largest population in the county, according to the most recent decennial federal census;
 - b. ~~Two Four~~ members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census; ~~and~~
 - c. One member shall be appointed jointly by the mayors of all the cities in that county.

Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subdivision.

The Neither the board of commissioners ~~may not~~ nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is

created. The third member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2003. The third member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2003. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the Speaker of the House of Representatives, one shall be the person recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the President Pro Tempore of the Senate, one shall be the person recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members."

Section 2. G.S. 160A-480.8(c)(3) reads as rewritten:

"(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the county to exercise any power of taxation, or restrict the ability of the county to repeal the tax. However, no action by a county to discontinue, decrease, or repeal a room occupancy tax shall become effective while previously issued bonds or notes secured by receipts from such a tax allocated to an authority by the county remain outstanding."

Section 3. Section 19 of Chapter 594 of the 1991 Session Laws, as rewritten by Section 5 of Chapter 458 of the 1995 Session Laws, reads as rewritten:

"Sec. 19. Repeal. -- The taxes levied pursuant to this authority may be repealed by the county by enacting an ordinance of repeal. No such repeal shall be effective until at least 180 days after the passage of the repeal ~~ordinance~~. ordinance, provided the levy of any occupancy tax in effect on January 1, 1997, shall not be decreased and no repeal thereof shall become effective until all obligations secured by receipts from such tax and issued under G.S. 160A-480.8 or G.S. 160A-480.12 have ceased to be outstanding. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."

Section 4. Section 1 of this act becomes effective January 1, 1999. The remainder of this act becomes effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of May, 1997.

Became law upon approval of the Governor at 5:45 p.m. on the 20th day of May, 1997.

H.B. 488

CHAPTER 69

AN ACT TO AUTHORIZE AN INCREASE IN THE FEE CHARGED FOR RABIES TAGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-190 reads as rewritten:

"§ 130A-190. Rabies vaccination tags.

A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words 'North Carolina' or the initials 'N.C.' and the words 'rabies vaccine.' Dogs and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by local ordinance. Rabies vaccination tags, links and rivets may be obtained from the Department. The Secretary is authorized to establish by rule a fee for the rabies tags, links and rivets. The Except as otherwise authorized in this section, the fee shall not exceed the actual cost of the rabies tags, links and rivets, plus transportation costs. The Secretary may increase the fee beyond the actual cost plus transportation, by an amount not to exceed five cents (5¢) per tag, to fund rabies education and prevention programs."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of May, 1997.

Became law upon approval of the Governor at 9:51 a.m. on the 22nd day of May, 1997.

H.B. 336

CHAPTER 70

AN ACT TO ALLOW TWO MEMBERS OF THE VICTIM'S FAMILY TO BE PRESENT AT AN EXECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-190 reads as rewritten:

"§ 15-190. Person or persons to be designated by warden to execute sentence; supervision of execution; who shall be present.

Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been

pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in ~~his stead; the warden's place, and the surgeon or physician of the penitentiary penitentiary. and six~~ Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or ~~ministers of the gospel member of the clergy or religious leader of the person's choosing may be present if they so desire, desire. and the board of directors of the penitentiary may provide for and pay the fee for each execution not to exceed thirty five dollars (\$35.00).~~"

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 9:52 a.m. on the 22nd day of May, 1997.

S.B. 265

CHAPTER 71

AN ACT TO AMEND THE STATUTES ON SPECIAL RESPONSIBILITY CONSTITUENT INSTITUTIONS IN THE UNIVERSITY OF NORTH CAROLINA SYSTEM TO CLARIFY THE ROLE OF THE OFFICE OF THE STATE AUDITOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-30.1 reads as rewritten:

"§ 116-30.1. *Special responsibility constituent institutions.*

The Board of Governors of The University of North Carolina, acting on recommendation made by the President of The University of North Carolina after consultation by him with the State Auditor, may designate one or more constituent institutions of The University as special responsibility constituent institutions. That designation shall be based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it. The Board of Governors, on recommendation of the President, shall adopt rules prescribing management staffing standards and internal financial controls and safeguards, including the lack of any significant ~~exceptions or audit findings in the annual financial audit by the State Auditor's Office, that must be met by a constituent institution before it may be designated a special responsibility constituent institution and must be maintained in order for it to retain that designation.~~ These rules shall not be designed to prohibit participation by a constituent institution because of its size. These rules shall establish procedures for the President and his staff to review the annual financial ~~audit reports or any other reports, special reports, electronic data processing reports, or performance reports reports, management letters, or any other report issued by the State Auditor's Office for each special responsibility constituent institution.~~ The President shall take immediate action regarding reported weaknesses in the internal control structure,

deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where ~~such audit exceptions~~ significant findings are identified, the President shall notify the Chancellor of the particular special responsibility constituent institution that ~~such exceptions must be resolved to the satisfaction of the State Auditor and the institution must make satisfactory progress in resolving the findings, as determined by the President of The University~~ University, after consultation with the State Auditor, within a three-month period commencing with the date of receipt of the published financial audit ~~report~~ report, any other audit report, or management letter. ~~If the exceptions are not satisfactorily resolved~~ satisfactory progress is not made within a three-month period, the President of The University shall recommend to the Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of ~~the State Auditor and the President of The University of North Carolina~~ Carolina, after consultation with the State Auditor. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.

The rules established under this section shall include review by the President, after consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and consultation must take place no less frequently than once each biennium."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of May, 1997.

Became law upon approval of the Governor at 9:53 a.m. on the 22nd day of May, 1997.

S.B. 800

CHAPTER 72

AN ACT TO TRANSFER THE AUTHORITY TO EMPLOY AN EXECUTIVE SECRETARY FOR THE JUDICIAL STANDARDS COMMISSION FROM THE COMMISSION AS A WHOLE TO THE COMMISSION CHAIR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-375(a) reads as rewritten:

"(a) The Judicial Standards Commission shall consist of: one Court of Appeals judge, one superior court judge, and one district court judge, each appointed by the Chief Justice of the Supreme Court; two members of the

State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and two citizens who are not judges, active or retired, nor members of the State Bar, appointed by the Governor. The Court of Appeals judge shall act as chairman chair of the Commission."

Section 2. G.S. 7A-377(b) reads as rewritten:

"(b) The chair of the Commission is authorized to employ an executive secretary to assist it the Commission in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases, the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice."

Section 3. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 14th day of May, 1997.

Became law upon approval of the Governor at 9:54 a.m. on the 22nd day of May, 1997.

H.B. 143

CHAPTER 73

AN ACT TO CHANGE THE ANNUAL COST REPORTING REQUIREMENTS OF ADULT CARE HOMES TO THE DEPARTMENT OF HUMAN RESOURCES AND TO CHANGE THE DEPARTMENT'S ENFORCEMENT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-4.2(e) reads as rewritten:

"(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period for facilities licensed pursuant to this Chapter or Chapter 131E of the General Statutes shall be October 1 through September 30, with the annual report due by the following ~~March 1~~ December 31, unless the Department determines there is good cause for delay. The annual reporting period for facilities licensed pursuant to Chapter 122C of the General Statutes shall be July 1 through June 30, with the annual report due by the following December 31, unless the Department determines there is good cause for delay. Under this subsection, good cause is an action that is uncontrollable by the provider. If the Department finds good cause for delay, it may extend the deadline for filing a report for up to an additional 30 days."

Section 2. G.S. 131D-4.2(g) reads as rewritten:

"(g) The Department shall suspend admissions to facilities that fail to submit annual reports by December 31, or by the date established by the Department when good cause for delay is found pursuant to G.S. 131D-4.2(e). Suspension of admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this

subsection. The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

- (1) Seek a court order to enforce compliance;
- (2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of May, 1997.

Became law upon approval of the Governor at 9:55 a.m. on the 22nd day of May, 1997.

H.B. 61

CHAPTER 74

AN ACT TO REPEAL OBSOLETE SECTIONS OF CHAPTER 106 OF THE NORTH CAROLINA GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-5 is repealed.

Section 2. G.S. 106-9 is repealed.

Section 3. G.S. 106-12 is repealed.

Section 4. G.S. 106-13 is repealed.

Section 5. G.S. 106-15, 106-16, 106-17, and 106-18 are repealed.

Section 6. G.S. 106-19 is repealed.

Section 7. G.S. 106-21 is repealed.

Section 8. Article 15 of Chapter 106 of the General Statutes is repealed.

Section 9. G.S. 106-197 is repealed.

Section 10. G.S. 106-429.1 through G.S. 106-434 are repealed.

Section 11. G.S. 106-436 through G.S. 106-451.1 are repealed.

Section 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of May, 1997.

Became law upon approval of the Governor at 9:55 a.m. on the 22nd day of May, 1997.

H.B. 527

CHAPTER 75

AN ACT TO ENHANCE THE ROLE OF OPTOMETRISTS IN MEDICAL COST CONTAINMENT THROUGH REVISION OF THE HOSPITAL PRIVILEGES LAW, TO REPEAL THE REQUIREMENT FOR AN OPTOMETRIST TO COLLABORATE WITH A PHYSICIAN IN THE USE OR PRESCRIPTION OF CERTAIN PHARMACEUTICAL AGENTS, TO ESTABLISH PEER REVIEW FOR OPTOMETRISTS, AND TO ESTABLISH AN OPTOMETRIST PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-114 reads as rewritten:

"§ 90-114. Optometry defined.

Any one or any combination of the following practices shall constitute the practice of optometry:

- (1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or
- (2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or
- (3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

~~Provided, however, in using or prescribing pharmaceutical agents, other than topical pharmaceutical agents within the definition hereinabove set out which are used for the purpose of examining the eye, the optometrist so using or prescribing shall communicate and collaborate with a physician duly licensed to practice medicine in North Carolina designated or agreed to by the patient."~~

Section 2. G.S. 131E-85 reads as rewritten:

"§ 131E-85. *Hospital privileges and procedures.*

(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, ~~dentists~~ dentists, optometrists, and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital on a non-discriminatory basis. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such individuals or others privileges to practice in hospitals, or to offer or provide any type of care.

(b) The procedures to be followed by a licensed hospital in considering applications of ~~dentists~~ dentists, optometrists, and podiatrists for privileges to practice in such hospitals shall be similar to those applicable to applications of physicians licensed under Chapter 90 of the General Statutes, Article 1. Such procedures shall be available upon request.

(c) In addition to the granting or denial of privileges, the governing body of each hospital may suspend, revoke, or modify privileges.

(d) All applicants or individuals who have privileges shall comply with all applicable medical staff bylaws, rules and regulations, including the policies and procedures governing the qualifications of applicants and the scope and delineation of privileges.

(e) The Department shall not issue or renew a license under this Article unless the applicant has demonstrated that the procedures followed in

determining hospital privileges are in accordance with this Part and rules of the Department."

Section 3. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"Optometry Peer Review.

"§ 90-127.4. Peer review agreements.

(a) The North Carolina State Board of Examiners in Optometry may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with the North Carolina State Optometric Society (Society), for the purpose of conducting peer review activities. Peer review activities to be covered by such agreements shall be limited in peer review proceedings to review of clinical outcomes as they relate to the quality of health care delivered by optometrists licensed by the Board.

(b) Peer review agreements shall include provisions for the Society to receive relevant information from the Board and other sources, provide assurance of confidentiality of nonpublic information and of the review process, and make reports to the Board. Peer review agreements shall include provisions assuring due process.

(c) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by the Society pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case.

(d) Peer review activities conducted in good faith pursuant to any agreement under this section are deemed to be State directed and sanctioned and shall constitute State action for the purposes of application of antitrust laws. The Board shall be responsible for legal fees arising from peer review activities."

Section 4. Article 7 of Chapter 8 of the General Statutes is amended by adding the following new section to read:

"§ 8-53.9. Optometrist/patient privilege.

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

Section 4.1. G.S. 90-118(c) reads as rewritten:

"(e) The Board shall not license any person to practice optometry in the State of North Carolina beyond the scope of the person's educational training as determined by the Board. No optometrist presently licensed in this State shall prescribe and use pharmaceutical agents in the practice of optometry unless and until he (i) has submitted to the Board evidence of satisfactory completion of all educational requirements established by the Board to prescribe and use pharmaceutical agents in the practice of optometry and (ii) has been certified by the Board as educationally qualified to prescribe and use pharmaceutical agents.

Provided, however, that no course or courses in pharmacology shall be approved by the Board unless (i) taught by an institution having facilities for both the didactic and clinical instruction in pharmacology and which is accredited by a regional or professional accrediting organization that is recognized and approved by the Council on Postsecondary Accreditation or the United States Office of Education and (ii) transcript credit for the course or courses is certified to the Board by the institution as being equivalent in both hours and content to those courses in pharmacology required by the other licensing boards in this Chapter whose licensees or registrants are permitted the use of pharmaceutical agents in the course of their professional practice."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 1997.

Became law upon approval of the Governor at 11:18 a.m. on the 22nd day of May, 1997.

S.B. 945

CHAPTER 76

AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.27 reads as rewritten:

"§ 90-85.27. *Definitions.*

As used in G.S. 90-85.28 through G.S. 90-85.31:

- (1) 'Equivalent drug product' means a drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription;
- (2) 'Established name' has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(e)(3);
- (3) 'Good manufacturing practice' has the meaning given it in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations;
- (4) 'Manufacturer' means the actual manufacturer of the finished dosage form of the drug;
- (4a) 'Narrow therapeutic index drugs' means those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic absorption, formulation-dependent bioavailability, and wide inpatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to

the provisions of G.S. 90-85.28(b1). The North Carolina Board of Pharmacy shall submit the list of narrow therapeutic index drugs to the Codifier of Rules, in a timely fashion for publication in January of each year in the North Carolina Register.

- (5) 'Prescriber' means anyone authorized to prescribe drugs pursuant to the laws of this State."

Section 2. G.S. 90-85.28 is amended by adding the following new subsection to read:

"(b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give documented consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term 'refilled' shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug."

Section 3. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:30 p.m. on the 22nd day of May, 1997.

H.B. 36

CHAPTER 77

AN ACT TO RELIEVE CONSUMERS OF THE REQUIREMENT OF FILING MONTHLY USE TAX RETURNS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16 is amended by adding a new subsection to read:

"(d) Use Tax on Out-of-State Purchases. -- Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

Section 2. This act is effective when it becomes law and applies to purchases made on or after January 1, 1997.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:40 p.m. on the 22nd day of May, 1997.

H.B. 147

CHAPTER 78

AN ACT TO CREATE THE FELONY OFFENSE OF DOG FIGHTING AND BAITING.

The General Assembly of North Carolina enacts:

Section 1. Article 47 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-362.2. Dog fighting and baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under his ownership or control to be used for, gambles on, or profits from an exhibition featuring the fighting or baiting of a dog is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of a dog is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of a dog is guilty of a Class H felony."

Section 2. G.S. 14-362.1 reads as rewritten:

"§ 14-362.1. Animal fights, other than cock fights, and animal baiting. fights and baiting, other than cock fights, dog fights and dog baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides an animal for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of an animal, other than a ~~cock~~, cock or a dog, is guilty of a Class 2 misdemeanor. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of an animal, other than a ~~cock~~, cock or a dog, is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains an animal, other than a ~~cock~~, cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal is guilty of a Class 2 misdemeanor.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a ~~cock~~, cock or a dog, is guilty of a Class 2 misdemeanor.

(d) A person who commits an offense under subsection (a) within three years after being convicted of an offense under this section is guilty of a Class I felony.

(e) This section does not prohibit the lawful taking or training of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:41 p.m. on the 22nd day of May, 1997.

H.B. 174

CHAPTER 79

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO PERMIT AN ACTIVE SENTENCE TO BE IMPOSED FOR A CRIMINAL CONVICTION IF THE DEFENDANT SERVED TIME AWAITING TRIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.20 is amended by adding a new subsection to read:

"(c1) Active Punishment Exception. -- The court may impose an active punishment for a class of offense and prior conviction level that does not otherwise authorize the imposition of an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:45 p.m. on the 22nd day of May, 1997.

H.B. 175

CHAPTER 80

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO MAKE CERTAIN TECHNICAL, CLARIFYING, AND CONFORMING AMENDMENTS TO STRUCTURED SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. -- For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant ~~may~~ shall be guilty of a Class 3 misdemeanor. The term of imprisonment ~~may~~ shall be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant ~~may~~ shall be guilty of a Class 2 misdemeanor. The term of imprisonment ~~may~~ shall be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant ~~may~~ shall be guilty of a Class 1 misdemeanor. The term of imprisonment ~~may~~ shall be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical

infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, he the judge may pronounce such other sentence as he the judge finds appropriate."

Section 2. G.S. 15A-1021(a) reads as rewritten:

"(a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the prosecutor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular ~~sentence, including a prison term different from the presumptive prison term applicable to the defendant, if convicted, under G.S. 15A-1340.4(f).~~ sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions."

Section 3. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. -- The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; 'A' indicates that an active punishment is authorized; and 'Life Imprisonment Without Parole' indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.
- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.
- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

I	II	III	IV	V	VI
0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts

A Life Imprisonment Without Parole or Death as
Established by Statute

	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A 384-480	DISPOSITION Aggravated
B1	192-240 144-192	230-288 173-230	269-336 202-269	307-384 230-307	346-433 260-346	288-384	PRESUMPTIVE Mitigated
	A 157-196	A 189-237	A 220-276	A 251-313	A 282-353	A 313-392	DISPOSITION Aggravated
B2	125-157 94-125	151-189 114-151	176-220 132-176	201-251 151-201	225-282 169-225	251-313 188-251	PRESUMPTIVE Mitigated
	A 73-92	A 100-125	A 116-145	A 133-167	A 151-188	A 168-210	DISPOSITION Aggravated
C	58-73 44-58	80-100 60-80	93-116 70-93	107-133 80-107	121-151 90-121	135-168 101-135	PRESUMPTIVE Mitigated
	A 64-80	A 77-95	A 103-129	A 117-146	A 133-167	A 146-183	DISPOSITION Aggravated
D	51-64 38-51	61-77 46-61	82-103 61-82	94-117 71-94	107-133 80-107	117-146 88-117	PRESUMPTIVE Mitigated
	I/A 25-31	I/A 29-36	A 34-42	A 46-58	A 53-66	A 59-74	DISPOSITION Aggravated
E	20-25 15-20	23-29 17-23	27-34 20-27	37-46 28-37	42-53 32-42	47-59 35-47	PRESUMPTIVE Mitigated
	I/A 16-20	I/A 19-24	I/A 21-26	A 25-31	A 34-42	A 39-49	DISPOSITION Aggravated
F	13-16 10-13	15-19 11-15	17-21 13-17	20-25 15-20	27-34 20-27	31-39 23-31	PRESUMPTIVE Mitigated
	I/A 13-16	I/A 15-19	I/A 16-20	I/A 20-25	A 21-26	A 29-36	DISPOSITION Aggravated
G	10-13 8-10	12-15 9-12	13-16 10-13	16-20 12-16	17-21 13-17	23-29 17-23	PRESUMPTIVE Mitigated
	C/I/A 6-8	I/A 8-10	I/A 10-12	I/A 11-14	I/A 15-19	A 20-25	DISPOSITION Aggravated
H	5-6 4-5	6-8 4-6	8-10 6-8	9-11 7-9	12-15 9-12	16-20 12-16	PRESUMPTIVE Mitigated
	C 6-8	C/I 6-8	I 6-8	I/A 8-10	I/A 9-11	I/A 10-12	DISPOSITION Aggravated
I	4-6 3-4	4-6 3-4	5-6 4-5	6-8 4-6	7-9 5-7	8-10 6-8	PRESUMPTIVE Mitigated

Section 4. G.S. 15A-1444(e) reads as rewritten:

"(e) Except as provided in ~~subsection (a1)~~ subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State."

Section 5. G.S. 113-136(j) reads as rewritten:

"(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is ~~punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 30 days, or both,~~ a Class 3 misdemeanor and may include a fine of not less than fifty dollars (\$50.00)."

Section 6. G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. -- A sentence in a criminal case that does not include an active ~~punishment or punishment~~, an intermediate ~~punishment~~, punishment, or any of the conditions of probation listed in subdivision (6) of this section."

Section 7. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class A1 or Class 1 misdemeanor conviction, 1 point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.
- (6) If all the elements of the present offense are included in the any prior offense, offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.
- (7) If the offense was committed while the offender was on probation or supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense

committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 8. G.S. 15A-1340.21(b) reads as rewritten:

"(b) Prior Conviction Levels for Misdemeanor Sentencing. -- The prior conviction levels for misdemeanor sentencing are:

- (1) Level I -- 0 prior convictions.
- (2) Level II -- At least 1, but not more than 4 prior convictions.
- (3) Level III -- At least 5 prior convictions.

In determining the prior conviction level, a prior offense may be included if it is either a felony or a misdemeanor at the time the offense for which the offender is being sentenced is committed."

Section 9. G.S. 90-98 reads as rewritten:

"§ 90-98. *Attempt and conspiracy; penalties.*

Any Except as otherwise provided in this Article, any person who attempts or conspires to commit any offense defined in this Article is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of guilty of an offense that is the same class as the offense which was the object of the attempt or conspiracy, conspiracy and is punishable as specified for that class of offense and prior record or conviction level in Article 81B of Chapter 15A of the General Statutes. If the offense the person attempts or conspires to commit is a felony, the attempt or conspiracy is punishable as a felony of the same class as that offense."

Section 10. G.S. 15-48 is repealed.

Section 11. G.S. 7A-598 reads as rewritten:

"§ 7A-598. *Grounds for order.*

An order may issue only on affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

- (1) That there is probable cause to believe that an offense has been committed which if committed by an adult would be punishable by imprisonment for more than two years; a felony offense; and
- (2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense."

Section 12. G.S. 7A-600 reads as rewritten:

"§ 7A-600. *Nontestimonial identification order at request of juvenile.*

A juvenile in custody for or charged with an offense which if committed by an adult would be punishable by imprisonment for more than two years a felony offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 13. G.S. 15A-263(a) reads as rewritten:

"(a) In General. -- Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation

and use of a pen register or a trap and trace device within the State if the judge finds:

- (1) That there is reasonable suspicion to believe that ~~an offense punishable by imprisonment for more than one year a felony offense, or a Class A1 or Class 1 misdemeanor offense~~ has been committed;
- (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and
- (3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 14. G.S. 15A-273 reads as rewritten:

"§ 15A-273. *Basis for order.*

An order may issue only on an affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

- (1) That there is probable cause to believe that ~~an offense punishable by imprisonment for more than one year a felony offense, or a Class A1 or Class 1 misdemeanor offense~~ has been committed;
- (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 15. G.S. 15A-281 reads as rewritten:

"§ 15A-281. *Nontestimonial identification order at request of defendant.*

A person arrested for or charged with ~~an offense punishable by imprisonment for more than one year a felony offense, or a Class A1 or Class 1 misdemeanor offense~~ may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 16. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:46 p.m. on the 22nd day of May, 1997.

H.B. 191

CHAPTER 81

AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50A-15 reads as rewritten:

"§ 50A-15. *Filing and enforcement of custody decree of another state.*

(a) An exemplified copy or a certified true copy of a custody decree of another state may be filed in the office of the clerk of any superior court of this State. The clerk shall treat the decree in the same manner as a custody decree of a court of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or such party's witnesses."

Section 2. G.S. 50A-16 reads as rewritten:

"§ 50A-16. *Registry of out-of-state custody decrees and proceedings.*

The clerk of each superior court shall maintain a registry in which ~~he~~ the clerk shall enter the following:

- (1) Exemplified and certified true copies of custody decrees of other states received for filing;
- (2) Communications as to the pendency of custody proceedings in other states;
- (3) Communications concerning a finding of inconvenient forum by a court of another state; and
- (4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding."

Section 3. G.S. 31-30 reads as rewritten:

"§ 31-30. *Validation of wills recorded without probate by subscribing witnesses.*

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud."

Section 4. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:47 a.m. on the 22nd day of May, 1997.

H.B. 192

CHAPTER 82

AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-506 reads as rewritten:

"§ 7A-506. *Creation; members; terms; qualifications; vacancies.*

(a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of 24 28 members, ~~six~~ seven to be appointed by the Governor, ~~six~~ seven to be appointed by the Speaker of the House of Representatives, ~~six~~ seven to be appointed by the President Pro Tempore of the Senate, and ~~six~~ seven to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, ~~and~~ two shall be district court ~~judges.~~ judges, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(c) Of the ~~six~~ seven appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, ~~and~~ at least ~~one~~ two shall not be ~~an attorney.~~ attorneys, and of the nonattorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

(d) Of the ~~six~~ seven appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, ~~and~~ at least ~~one~~ two shall not be ~~an attorney.~~ attorneys, and of the non-attorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

(e) Of the ~~six~~ seven appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, ~~and~~ at least one shall be a ~~magistrate.~~ magistrate, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. The two public members appointed by the Governor and the Speaker of the House of Representatives shall be appointed for four-year terms to begin July 1, 1997. The two public members appointed by the Chief Justice and the President Pro Tempore of the Senate shall be appointed for two-year terms to begin July 1, 1997. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed."

Section 2. G.S. 7A-507 reads as rewritten:

"§ 7A-507. *Ex officio members.*

The following additional members shall serve *ex officio*: the Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. ~~Ex officio members have no vote.~~ The Administrative Officer of the Courts has no vote."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:48 p.m. the 22nd day of May, 1997.

H.B. 197

CHAPTER 83

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"§ 1-339.3A. *Judge or clerk may order public or private sale.*

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private ~~sale~~. sale and whether a public sale of timber shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that ~~such~~ the sale be a private sale."

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over such the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued, has jurisdiction with respect to the resale of separate tracts of property situated in other counties as well as in the clerk's own county, and when the public sale is by auction an upset bid may be filed only with such that clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27."

Section 3. G.S. 1-339.8(c) reads as rewritten:

"(c) ~~The sale,~~ When the public sale is by auction, the sale and each subsequent resale, of each ~~such~~ separate tract shall be subject to a separate upset bid; and to the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each

tract, after an upset bid thereon, shall be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 4. G.S. 1-339.13(a) reads as rewritten:

"(a) Whenever a public sale is ordered, the order of sale shall

- (1) Designate the person authorized to hold the sale;
- (2) Direct that the property be sold at public auction to the highest bidder; bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;
- (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;
- (4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;
- (5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held; and
- (6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale,~~ sale; and
- (7) If the sale is to be a sale of timber by sealed bid, specify:
 - a. The minimum number of bids that must be submitted, which shall not be less than three, and
 - b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened."

Section 5. G.S. 1-339.13(b) reads as rewritten:

"(b) The order of public sale may also, but is not required to

- (1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;
- (2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems advantageous, advantageous; and
- (3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A."

Section 6. Part 2 of Article 29A of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-339.13A. Public sale of timber by sealed bid; appraisal; bid procedure.

(a) When a sale of timber by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

- (1) Obtain one or more appraisals of the timber to be sold;
- (2) Determine the place at which and the manner and form in which sealed bids should be submitted;
- (3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and
- (4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24. A person conducting an appraisal pursuant to this section, including a partnership, corporation, company, or other business of the appraiser, may not submit a bid on the timber which is the subject of the appraisal. An appraisal conducted pursuant to this section shall remain confidential until the appraisal is filed with the report of sale pursuant to G.S. 1-339.24. The contents of the appraisal shall not be divulged by the appraiser to any person other than the person holding the sale nor may the appraiser conduct an appraisal of the timber for any other person until after the sale is confirmed.

(c) All sealed bids received on or after the first date set for submitting bids and, at or before the time set for opening the bids, shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser, and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale."

Section 7. G.S. 1-339.15 reads as rewritten:

"§ 1-339.15. *Public sale; contents of notice of sale.*

The notice of public sale shall shall:

- (1) Refer to the order authorizing the sale;
- (2) Designate If the sale is to be by public auction, designate the date, hour and place of sale;
- (2a) If the sale is to be a sale of timber by sealed bid, specify:
 - a. The date on which sealed bids will first be accepted;
 - b. The place or address at which sealed bids are to be submitted;
 - c. The manner and form in which sealed bids are to be submitted;
 - d. The time and place at which any sealed bids received will be opened; and
 - e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);
- (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add such any further description as will acquaint bidders with the nature and location of the property;
- (4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add such any further description as will acquaint bidders with the nature of the property;
- (5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the sale; and sale and, in the case of a sale by sealed bid, the date by which

any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and

- (6) Include any other provisions required by the order of sale to be included therein."

Section 8. G.S. 1-339.17 reads as rewritten:

"§ 1-339.17. Public sale; posting and publishing notice of sale of real property.

(a) The notice of public sale of real property shall

- (1) Be posted, at the courthouse door in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for thirty days immediately preceding the sale,

(2) And in addition thereto,

- a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but
- b. If no such newspaper qualified for legal advertising is published in the county, then notice shall be published once a week for at least four successive weeks in a newspaper having a general circulation in the county.

(b) When the notice of public sale is published in a newspaper,

- (1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than twenty-two days, including Sundays, and

- (2) The date of the last publication shall be not more than 10 days preceding the date of the sale. sale in a sale by auction, or the date on which sealed bids are opened in a sale by sealed bid.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.

(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources for the county or counties in which the timber to be sold is located.

(d) In addition to the foregoing, the notice of public sale shall be otherwise posted or the sale shall be otherwise advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is a sale of timber by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section."

Section 9. G.S. 1-339.18(a) reads as rewritten:

"(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, at the courthouse door, in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale."

Section 10. G.S. 1-339.20(a) reads as rewritten:

"(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~ sale, and a person authorized to hold a public sale of timber by sealed bid may postpone the time for submitting and opening bids to a date, time, and place certain not later than six days, exclusive of Sunday, after the original date for the opening of bids:

- (1) When there are no bidders, or
- (2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or
- (3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or
- (4) When he is unable to hold the sale because of illness or for other good reason, or
- (5) When other good cause exists."

Section 11. G.S. 1-339.20(b) reads as rewritten:

"(b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through his agent or attorney

- (1) At the time and place advertised for the ~~sale, sale or for the opening of sealed bids~~, publicly announce the postponement ~~thereof, and thereof;~~
- (2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted ~~at the courthouse door~~, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement, postponement; and~~
- (3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person who submitted a bid."

Section 12. G.S. 1-339.20(c) reads as rewritten:

"(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

- (1) State that the sale is postponed,
- (2) ~~State~~ In the case of a sale by public auction, state the hour and date to which the sale is postponed,
- (2a) In the case of a sale of timber by sealed bid, state the date, time, and place to which the opening of bids is postponed,
- (3) State the reason for the postponement, and
- (4) Be signed by the person authorized to hold the sale, or by his agent or attorney."

Section 13. G.S. 1-339.21 reads as rewritten:

" 1-339.21. ~~Public sale; sale by auction; time of sale.~~

(a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.

(b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M."

Section 14. G.S. 1-339.22 reads as rewritten:

"§ 1-339.22. Public sale; sale by auction; continuance of uncompleted sale.

A public sale by auction commenced but not completed within the time allowed by G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case such a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued."

Section 15. G.S. 1-339.24(a) reads as rewritten:

"(a) The person holding a public sale shall, within five days after the date of the ~~sale~~, sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was a sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending."

Section 16. G.S. 1-339.24(b) reads as rewritten:

"(b) The report shall be signed by the person authorized to hold the sale, or by his agent or attorney and shall show

- (1) The title of the action or proceeding;
- (2) The authority under which the person making the sale acted;
- (3) ~~The~~ If the sale was by public auction, the date, hour and place of the sale;
- (3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which the sealed bids were opened, the number of bids received, and the amount of each bid;
- (4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and
- (5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
- (6) The names of the purchasers;
- (7) The price at which the property, or each part thereof, was sold and that ~~such~~ this price was the highest bid therefor; and
- (8) The date of the report."

Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

"(d) The report of a sale of timber by sealed bid shall include the information required by G.S. 1-339.13A(b) and G.S. 1-339.17(c1)."

Section 18. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price by ten percent (10%) of the first \$1000 thereof plus five percent (5%) of any excess above \$1000, but in any event with a minimum increase of \$25, such the increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the

sale was filed, within ten days after the filing of such the report; such the deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection ~~(b)~~ (b) of this section."

Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

"(e) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 20. G.S. 1-339.26 reads as rewritten:

"§ 1-339.26. Public ~~sale~~; sale by auction; separate upset bids when real property sold in parts; subsequent procedure.

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the sale, and each subsequent resale, of any such part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each such part shall thereafter be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

"§ 1-339.27. Public ~~sale~~; sale by auction; resale of real property; jurisdiction; procedure."

Section 22. G.S. 1-339.27(a) reads as rewritten:

"(a) When in a public sale by auction an upset bid is submitted to the clerk of the superior court, together with a compliance bond if one is required, a resale shall be ordered."

Section 23. G.S. 1-339.27(b) reads as rewritten:

"(b) In any case in which a judge has jurisdiction of the original ~~sale~~, public sale by auction, he may provide by order that jurisdiction is retained for resale purposes, and in ~~such~~ that case when an upset bid is submitted, the judge having jurisdiction shall make the order of resale. In all cases where the judge does not retain jurisdiction of a public sale by auction for resale purposes, and in all cases where a public sale by auction is originally ordered by a clerk, the clerk shall make the order of resale and shall have jurisdiction of the proceeding for resale purposes. Whenever the original order of public sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be consistent with terms of the original order, and the final order of confirmation shall be made by the judge having jurisdiction of the proceeding."

Section 24. G.S. 1-339.27(c) reads as rewritten:

"(c) Notice of any resale to be held because of an upset bid shall shall:

- (1) Be posted, ~~at the courthouse door in the area designated by the~~ clerk of superior court for the posting of notices in the county in which the property is situated, for fifteen days immediately preceding the sale,

(2) And in addition thereto,

- a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least two successive weeks, but
- b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, the notice shall be posted at three other public places in the county for fifteen days immediately preceding the sale."

Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

"(j) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 26. G.S. 1-339.28(b) reads as rewritten:

"(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by the a resident superior court judge of the district or the of, or a judge regularly holding the courts of of, the district, district or set of districts as defined in G.S. 7A-41.1(a)."

Section 27. G.S. 1-339.28(c) reads as rewritten:

"(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired."

Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

"(e) No public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing, the court may consider any of the following factors:

- (1) The appraisals obtained by the person who conducted the sale;
- (2) The number and amounts of the other bids received;
- (3) Comparable sales of similar timber within the relevant time period;
- (4) Short-term market factors that depressed the price at the time of the sale;
- (5) The likelihood of significantly increasing the price through another sale;
- (6) The additional cost of conducting another sale;
- (7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and
- (8) Any other factors in evidence that the court considers relevant."

Section 29. G.S. 1-339.30(a) reads as rewritten:

"(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and he fails to make such the required deposit, the person holding the sale shall at the same time and place again offer the property for sale."

Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

"(a) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 31. G.S. 1-339.30(d) reads as rewritten:

"(d) When the highest bidder at a public sale or resale of real property by auction fails to comply with his bid within ten days after the tender to him of a deed for the property or after a bona fide attempt to tender such the deed, the judge or clerk having jurisdiction may order a resale. The procedure for such a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property except that the provisions of G.S. 1-339.27 (c), (d) and (e) apply with respect to the posting and publishing of the notice of such the resale."

Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

"(d) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with his bid within 10 days after the tender to him of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 33. G.S. 1-339.30(e) reads as rewritten:

"(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale is had because of such his default, he shall remain liable to the extent that the final sale price is less than his bid plus bid, and for all costs of such the resale or resales."

Section 34. This act becomes effective December 1, 1997, and applies to all judicial sales ordered on or after that date.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:50 p.m. on the 22nd day of May, 1997.

H.B. 935

CHAPTER 84

AN ACT TO RECOGNIZE LLAMAS AS LIVESTOCK ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-52.01 reads as rewritten:

"§ 113A-52.01. *Applicability of this Article.*

This Article shall not apply to the following land-disturbing activities:

- (1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

- a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - b. Dairy animals and dairy products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - e. Bees and apiary products.
 - f. Fur producing animals.
- (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.
 - (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
 - (4) For the duration of an emergency, activities essential to protect human life."

Section 2. G.S. 68-15 reads as rewritten:

"§ 68-15. *Term 'livestock' defined.*

The word 'livestock' in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine."

Section 3. Any rules adopted by the Board of Agriculture that affect llamas shall not refer to llamas as exotic or wild animals. It is the intent of the General Assembly that llamas be treated as domesticated livestock in order to promote the development and improvement of the llama industry in the State. This section does not prohibit the Board of Agriculture from classifying llamas for animal health purposes in accordance with generally accepted standards of veterinary medicine. For purposes of this section, 'llama' means a South American camelid that is an animal of the genus llama. Llama includes llamas, alpacas, and guanacos. Llama does not include vicunas.

Section 4. This act is effective when it becomes law. Section 3 of this act applies to rules adopted or amended on or after this date.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

Became law upon approval of the Governor at 5:59 p.m. on the 22nd day of May, 1997.

H.B. 17

CHAPTER 85

AN ACT TO REPEAL AN ACT RELATING TO DISCLOSURE OF BUSINESS INTEREST IN GUILFORD COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 738 of the 1995 Session Laws is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

**AN ACT TO GIVE MUNICIPALITIES IN BUNCOMBE COUNTY
GENERAL LAW POWERS AS TO DOWNTOWN DEVELOPMENT
PROJECTS.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 721 of the Session Laws of 1985, Chapter 569 of the Session Laws of 1989, and Section 2 of Chapter 619 of the Session Laws of 1987 are repealed.

Section 2. Nothing in this act affects any contracts or projects previously entered into or undertaken under the provisions of Chapter 721 of the Session Laws of 1985.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

**AN ACT CODIFYING THE METHOD OF ELECTING THE PERSON
COUNTY BOARD OF EDUCATION AS ORDERED BY THE UNITED
STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA.**

The General Assembly of North Carolina enacts:

Section 1. The Person County Board of Education shall consist of five members elected in nonpartisan plurality elections for concurrent four-year terms.

Section 2. Elections for the Board of Education shall be held at the same time as the general election for State and county offices in the year 2000 and every four years thereafter. Board members shall take office at the time specified by general State law for county officers.

Section 3. The period for filing notices of candidacy for the Board of Education shall commence at noon on the first Monday in August preceding the election, and shall close at noon on the last Friday of August. If, however, general State law provides a different filing period for nonpartisan plurality elections held in November of even-numbered years, the filing shall be conducted according to that general State law.

Section 4. This act is intended to codify the method of election ordered by the United States District Court for the Middle District of North Carolina in the Consent Decree entered on 30 November 1995 in Webster, et al., v. Board of Education of Person County, et. al., No. 1:91CV554. Pursuant to the Consent Decree, the method of election may be evaluated following the 2000 election, if the plaintiffs make such request within the time specified in the decree.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

H.B. 281

CHAPTER 88

AN ACT TO PROVIDE THAT THE ALEXANDER COUNTY BOARD OF COMMISSIONERS MUST FILL A VACANCY WITH THE PERSON NOMINATED BY THE APPROPRIATE POLITICAL PARTY IF THE NOMINATION IS MADE ON A TIMELY BASIS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-27.1(h) reads as rewritten:

"(h) This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.1

Became law on the date it was ratified.

H.B. 288

CHAPTER 89

AN ACT TO ALLOW SERVICE OF COMPLAINTS BY PUBLICATION AND SERVICE OF NOTICES AND ORDERS BY REGULAR MAIL IN HOUSING CODE CASES IN THE CITY OF GREENSBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 578 of the 1993 Session Laws reads as rewritten:

"~~Section 1. Complaints or orders~~ A complaint issued by a public officer pursuant to Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes shall be served upon persons either personally or by registered or certified mail. mail, and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is returned, but the regular mail is not returned by the post office within 10 days after mailing, service shall be deemed sufficient. The person mailing such complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be deemed conclusive in the absence of fraud. A person who cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication in the manner provided for service of process in G.S. 1A-1, Rule 4(j)1) of the North Carolina Rules of Civil Procedure. All notices and orders subsequent to the complaint may be served in accordance with G.S. 1A-1, Rule 5(b) of the North Carolina Rules of Civil Procedure."

Section 2. This act applies to the City of Greensboro only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

H.B. 298

CHAPTER 90**AN ACT INCREASING FROM FIVE TO SEVEN THE MEMBERSHIP OF THE COLUMBUS COUNTY AIRPORT AUTHORITY.**

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 134 of the 1995 Session Laws reads as rewritten:

"Sec. 2. The Airport Authority shall consist of ~~five~~ seven members who shall be appointed to staggered terms of four years by the Columbus County Board of Commissioners. All of the members shall be residents of Columbus County. Of the initial ~~five~~ seven members, ~~two~~ three shall be appointed to a term of four years and ~~three~~ four shall be appointed to a term of two years. Thereafter all terms shall be for four years. Each member shall take and subscribe before the Clerk of the Superior Court of Columbus County an oath of office and file the same with the Columbus County Board of Commissioners. Upon the occurrence of any vacancy on the Airport Authority, the vacancy shall be filled within 60 days after the vacancy occurs at a regular meeting of the Board of County Commissioners. Membership on the Columbus County Board of Commissioners and on the Airport Authority shall not constitute double office holding within the meaning of Article VI, §9 of the Constitution of North Carolina."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

H.B. 526

CHAPTER 91**AN ACT TO AUTHORIZE THE TOWN OF WRIGHTSVILLE BEACH TO CREATE A SEA TURTLE SANCTUARY.**

The General Assembly of North Carolina enacts:

Section 1. The Town of Wrightsville Beach may create and establish a sea turtle sanctuary within the areas of the town limits above the mean low watermark, to include the foreshore. Any ordinance adopted by the town to regulate activities within the sea turtle sanctuary which may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinance adopted by the town may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles at G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or

sea turtle eggs in violation of an ordinance adopted by the Town of Wrightsville Beach.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

H.B. 569

CHAPTER 92

AN ACT TO CLARIFY THAT IN ELECTIONS TO FILL VACANCIES ON THE WENDELL TOWN BOARD FOR THE REMAINDER OF THE UNEXPIRED TERM, THE NEXT HIGHEST VOTE GETTER RECEIVES A TWO-YEAR TERM, RATHER THAN HAVING A SEPARATE ELECTION ON THE BALLOT.

The General Assembly of North Carolina enacts:

Section 1. Section 4.2 of the Charter of the Town of Wendell, being Chapter 107 of the 1985 Session Laws, reads as rewritten:

"Sec. 4.2. Conduct and Method of Election. Elections for Mayor and Board of Commissioners shall be by the nonpartisan plurality method set out in the General Statutes. All elections and referendums of the Town of Wendell shall be held and conducted as provided by the applicable General Statutes.

If a vacancy occurs on the Board of Commissioners and under G.S. 160A-63 there is an election to fill the remainder of the unexpired term, then the election to fill the remainder of the unexpired term shall be held on the same ballot, the candidates receiving the highest number of votes equal to the number of persons to be elected to four-year terms receive those terms, and the candidate or candidates receiving the next highest numbers of votes equal to the number of persons to be elected to two-year terms receive those terms. There shall be no separate designation on the ballot for the two-year terms, and each voter shall have as many votes as there are persons to be elected."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

H.B. 806

CHAPTER 93

AN ACT TO ALLOW THE CITY OF CONOVER TO SERVE COMPLAINTS AND ORDERS BY PUBLICATION UPON OWNERS WHOSE IDENTITIES OR WHEREABOUTS ARE KNOWN AND THEY REFUSE TO ACCEPT SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-445(b) reads as rewritten:

"(b) (1) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either

personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

~~(2) This subsection applies only to municipalities that have a population in excess of 300,000 by the last federal census."~~

Section 2. This act applies only to the City of Conover.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

H.B. 877

CHAPTER 94

AN ACT TO ADD, FOR THE TOWN OF KURE BEACH ONLY, EROSION CONTROL MEASURES TO THE LIST OF PUBLIC ENTERPRISES THAT CITIES HAVE FULL AUTHORITY TO PROTECT AND REGULATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-311 reads as rewritten:

"§ 160A-311. Public enterprise defined.

As used in this Article, the term 'public enterprise' includes:

- (1) Electric power generation, transmission, and distribution systems;
- (2) Water supply and distribution systems;
- (3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
- (4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without;
- (5) Public transportation systems;
- (6) Solid waste collection and disposal systems and facilities;
- (7) Cable television systems;
- (8) Off-street parking facilities and systems;
- (9) Airports;
- (10) Structural and natural stormwater and drainage systems of all types, types;
- (11) Erosion control works."

Section 2. This act shall not be construed to modify G.S. 113A-56.

Section 3. This act is effective when it becomes law and applies only to the Town of Kure Beach.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law on the date it was ratified.

S.B. 47

CHAPTER 95

AN ACT TO PROHIBIT THE RECKLESS USE OF A FIREARM OR BOW AND ARROW AND TO REGULATE HUNTING FROM THE RIGHT-OF-WAY IN WASHINGTON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to use a firearm, bow and arrow, or crossbow carelessly or heedlessly or in willful or wanton disregard of the rights or safety of others. Such reckless use of a weapon in violation of this section includes using a firearm, bow and arrow, or crossbow in a manner that poses a hazard to any person or property, or involves the discharge of a firearm sending a projectile across the property of another without that person's permission.

Section 2. It is unlawful to hunt, take, or kill, or to attempt to hunt, take, or kill, any wild animal or wild bird with firearm, bow and arrow, or crossbow, on, from, or across the right-of-way of any State-maintained road or highway, or to discharge any firearm, bow and arrow, or crossbow on, from, or across the right-of-way of any State-maintained road or highway. A hunter recovering dogs shall not be in violation of this section so long as all the hunter's weapons remain in a motor vehicle.

Section 3. It is unlawful to possess a loaded shotgun or center-fire rifle while on the right-of-way of any State-maintained road or highway outside the confines of the passenger area of a vehicle. This section does not apply to the owner in fee of the land adjacent to the right-of-way.

Section 4. It is unlawful for any person to hunt, take, or kill a wild animal or wild bird with firearms or dogs, or to possess a loaded firearm outside the confines of the passenger area of a vehicle, on the land of another, without the permission of the owner or lessee of the land.

Section 5. This act does not apply to:

- (1) The use or possession of firearms in defense of persons or property;
- (2) Law enforcement officers or members of the armed forces acting in the line of duty;
- (3) The use of firearms pursuant to the lawful direction of law enforcement officers;
- (4) Persons lawfully engaged in pest control;
- (5) Public or private shooting galleries; or
- (6) Private landowners on their own property using their own firearms to control pests or pursuant to permits issued by the Wildlife Resources Commission.

Section 6. Violation of this act is a Class 3 misdemeanor.

Section 7. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 8. This act shall apply to Washington County only.

Section 9. This act becomes effective December 1, 1997.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

S.B. 64

CHAPTER 96

AN ACT TO AMEND THE CHARTER OF THE TOWN OF TARBORO TO PERMIT MEMBERS OF THE TOWN COUNCIL TO ENTER INTO UNDERTAKINGS OR CONTRACTS WITH THE TOWN UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Tarboro, being Chapter 73 of the 1995 Session Laws, is amended by adding a new section to read:

"Sec. 2.8. **Contracts With Council Members.** G.S. 14-234 shall not apply to any member of the Town Council if all of the following conditions are met:

- (1) The undertaking or contract is for the purchase of apparatus, supplies, materials, or equipment which requires an expenditure during any single fiscal year of an amount that is less than the amounts stated in G.S. 143-129.
- (2) The Town seeks informal bids from at least two other suppliers, in addition to the supplier in which the member of the Council has a financial interest.
- (3) The other suppliers are either unwilling or unable to sell to the Town the needed apparatus, supplies, materials, or equipment, or the supplier in which the member of the Council has a financial interest is the lowest responsible bidder.
- (4) The undertaking or contract between the Town and the member of the Council is approved by specific resolution of the Council adopted in an open meeting and is recorded in its minutes.
- (5) The member of the Council does not vote on any matters related to the undertaking or contract and does not participate in the consideration of or action upon the authorizing resolution."

Section 2. This act is effective when it becomes law and applies to undertakings or contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

S.B. 121

CHAPTER 97

AN ACT TO INCLUDE BUNCOMBE, MADISON, MCDOWELL, AND YANCEY COUNTIES IN THE STATEWIDE SEASONS FOR TAKING BEAVER.

The General Assembly of North Carolina enacts:

Section 1. Subsection (f) of Chapter 33 of the 1993 Session Laws is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

S.B. 290

CHAPTER 98

AN ACT TO AMEND THE CHARTER OF RUTHERFORDTON CONCERNING THE DISTRIBUTIONS OF PROFITS FROM THE LOCAL ALCOHOLIC BEVERAGE CONTROL SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Section 5.4 of Chapter 350 of the 1979 Session Laws reads as rewritten:

"Section 5.4. Alcoholic Beverage Control Stores. A. The governing body of the Town of Rutherfordton may, on its own motion, and shall, upon receipt of petition signed by qualified voters of the Town equal in number to fifteen percent (15%) of the votes cast for Mayor in the most recent regular town election, call and conduct a special election in the Town upon the question of whether Alcoholic Beverage Control stores shall be established in the Town and/or whether 'off-premises' sales of malt beverages shall be permitted. Such election or elections may be held notwithstanding the provisions of G.S. 18A-52(d)(h) and (i). No new registration of voters shall be necessary for such special election, and all qualified voters of the town who are registered prior to the registration period for such special election, and all who register during such period shall be eligible and entitled to vote in such special election. Except as otherwise provided herein, if a special election is called, the special election authorized shall be conducted under the same statutes, rules and regulations applicable to general elections for the Town of Rutherfordton. The governing body shall cause public notice of any such special election to be posted at the Town Hall and published in a newspaper having general circulation in the town at least 15 days preceding the day of the election.

B. At such special election, ballots shall be provided which contain the words, 'For Town Alcoholic Beverage Control Stores' and 'Against Town Alcoholic Beverage Control Stores' and/or, 'For off-premises sales of malt beverages' and 'Against off-premises sales of malt beverages'. The Town Council shall determine whether both questions are to be included on the same ballot or separate ballots. Appropriate squares shall be printed to the left of each phrase so that each voter may designate with an 'X' his

preference. The cost of conducting the election shall be appropriated from the General Fund of the Town of Rutherfordton.

C. If a majority of the votes cast at any such special election authorized under this section shall be cast 'For Town Alcoholic Beverage Control Stores' then it shall thereafter be lawful for such store or stores to be established and operated within the town, and the Town Council will then immediately create and appoint the Town of Rutherfordton Alcoholic Beverage Control Board, to be composed of a chairman and two other members. The member designated chairman by the Town Council shall serve for a term of three years; one member for a term of two years; and one member for a term of one year. After serving the initial terms, successors shall be appointed for terms of three years. Any vacancy on such board shall be filled by the Town Council for the unexpired term. Compensation of the members of the Board shall be fixed by the Town Council. If a majority of the votes cast in any such election authorized under this section shall be cast 'For off-premises sales of malt beverages' then the off-premises sale of malt beverages shall thereafter be lawful in the Town of Rutherfordton.

D. The Town of Rutherfordton Alcoholic Beverage Control Board shall have all the powers granted to, and duties imposed upon, county alcoholic control boards by G.S. 18A-17, except that G.S. 18A-17 (14) shall not apply to the Rutherfordton Board of Alcoholic Beverage Control, and shall be subject to the powers and authority of the State Board of Alcoholic Beverage Control as granted by G.S. 18A-15; provided, however, that the location of stores and the purchase or lease of real property shall be subject to the approval of the Town Council.

The Rutherfordton Board of Alcoholic Beverage Control on a quarterly basis shall, after retaining a sufficient and proper working capital and making payment of salaries and expenses, distribute the net profits out of the operation of said alcoholic beverage control store(s) in the following manner, and none other:

Five percent (5%) to the Rutherford County Department of Mental Health to be specifically used for ~~operation and programs of the Green Street Center for Alcohol and Drug Abuse Rehabilitation, for so long as the Center shall be located in the corporate limits of the Town of Rutherfordton.~~ alcohol and drug rehabilitation programs.

Ten percent (10%) to the Rutherford County Board of Education for specific use in meeting capital outlay needs at Rutherfordton-Spindale High School.

Five percent (5%) to the Rutherford County Board of Education for specific use in meeting the capital outlay needs at Rutherfordton Elementary School.

Five percent (5%) to the Rutherford County Board of Education for specific use in meeting the capital outlay needs at ~~New Hope~~ Rutherfordton-Spindale Middle School.

Five percent (5%) to the Rutherford County Board of Education for specific use in meeting the capital outlay needs at Ruth Elementary School.

Twenty percent (20%) to the Town of Rutherfordton Parks and Recreation Commission to be used for capital improvements, maintenance and programs in its Recreational activities.

Twenty-five percent (25%) to the Town Council of Rutherfordton for use in law enforcement through the Town Police Department.

Twenty-five percent (25%) to the Town Council of Rutherfordton to be used for any lawful purposes the board may deem necessary and essential.

All agencies outside of the government of the Town of Rutherfordton which receive net proceeds from the Town Alcoholic Beverage Control Board, shall be required to file an annual report to the Town Council, specifying how all proceeds were expended.

E. Subsequent elections on Alcoholic Beverage Control stores or off-premises sales of malt beverages shall not be held within two years of any previous election on the question, provided an election on one question shall not prevent an election on the other question.

If a subsequent election is held and the majority of the votes are cast 'Against Town Alcoholic Beverage Control Stores' the Town of Rutherfordton Alcoholic Beverage Control Board shall, within three months of certification of such election, dispose of all alcoholic beverages on hand and all of the assets under the control of said board, and convert the same into cash and turn the same over to the Town Treasurer. If a subsequent election is held and the majority of the votes are cast 'Against off-premises sales of malt beverages' then the off-premises sale of malt beverages shall cease to be lawful in the Town of Rutherfordton."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

S.B. 322

CHAPTER 99

AN ACT TO REQUIRE THAT PETITIONS TO QUALIFY INDEPENDENT CANDIDATES ON THE BALLOT FOR COUNTY OFFICE IN AVERY COUNTY RECEIVE THE MINIMUM AMOUNT OF SIGNATURES FROM EACH PRECINCT.

The General Assembly of North Carolina enacts:

Section 1. In the application of G.S. 163-122(a)(3) to county offices elected at large within the county, petitions must be signed by qualified voters of each precinct equal in number to four percent (4%) of the total number of registered voters in each precinct, rather than four percent (4%) of the total number of voters in the county. If the certification of registered voters to the State Board of Elections required by that subdivision is not broken down on a precinct-by-precinct basis, then the records of the county board of elections at the time the petition is submitted shall govern.

Section 2. This act applies to Avery County only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

H.B. 65

CHAPTER 100

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF CANTON.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the Town of Canton:

Beginning at a point in the Eastern right-of-way of S.R. 1833 (Wells Town Road), the Southwest corner of the 3.358-Acre tract annexed by Ordinance dated September 8th, 1992 (Food Lion, Inc., Property), thence North 58° 31' 24" West, 60.62' to an iron bar, the Southeast corner of the Ingles Markets, Inc., Property, thence the following three courses and distances with the Northern margin of the right-of-way of S.R. 1834 (DB 273, Pg 26): South 67° 38' 37" West, 190.27' to an iron bar, South 60° 38' 37" West, 341.83' to an iron bar, South 60° 38' 37" West, 369.89' to an iron bar, the Southwest corner of Ingles Markets, Inc., Property, thence leaving said right-of way, and with the Easterly line of Jimmie Wells King, North 07° 36' 00" East a distance of 404.97' an iron pin at the Southeasterly corner of the property of Raymond C. Stamey, thence with the Easterly line of Raymond C. Stamey and the Easterly line of Virginia Trostel James, North 06° 57' 00" East a distance of 595.48' to a point in the present Town Limits thence with said Town Limits along the arc of a curve to the right having a radius of 5,429.58' and an arc length of 356.05' (said arc being subtended by a chord bearing South 78° 54' 16" East, 355.99') to a point; thence continuing with said Town Limits along the arc of a curve to the right having a radius of 11,159.16' and an arc length of 434.78' (said arc being subtended by a chord bearing South 75° 38' 17" East, 60.62') to a point in the Eastern right-of-way of S.R. 1833 and the Westerly line of Food Lion, Inc., (DB 429, Pg 34); thence with said right-of-way and property line, along the Present Town Limits the following three calls: South 07° 08' 48" West, 96.00'; South 11° 58' 31" West, 193.99'; and South 23° 18' 08" West, 138.77' to the Point of Beginning, containing 0.58 Acre within the right-of-way of S.R. 1833 and 12.19 Acres of the 15.73-Acre Ingles Markets, Inc., Tract, all as shown on a map prepared by Roger M. Lyda, R.L.S., dated April 25th, 1995.

Section 2. This act shall have no effect upon the validity of any liens of the Town of Canton for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Canton.

Section 3. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

H.B. 70

CHAPTER 101

AN ACT TO GRANT AUTHORITY TO THE CITY OF ROANOKE RAPIDS TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~City of Lumberton~~ Cities of Lumberton and Roanoke Rapids only."

Section 2. Section 1 of Chapter 733 of the 1995 Session Laws, which applied only to the City of Lumberton, reads as rewritten:

"Section 1. G.S. 160A-443(5a) reads as rewritten:

'(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

- a. In a municipality ~~located in counties which have a population in excess of 163,000 by the last federal census,~~ other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;
- b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year

period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

~~This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census."~~

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

H.B. 603

CHAPTER 102

AN ACT TO AUTHORIZE MADISON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Referendum. The Madison County Board of Commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether a room occupancy tax of up to three percent (3%) will be levied in accordance with this act. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this act shall be:

[] FOR [] AGAINST

Tax on rental of lodging at hotels, motels, and similar businesses, at a maximum rate of three percent (3%), to be used to promote travel and tourism and for tourism-related expenditures.

(b) Authorization and scope. If a majority of those voting in a referendum held pursuant to this act vote for the levy of the tax, the Madison County Board of Commissioners may by resolution levy a room occupancy tax as provided in this act. In addition, if the county has not held a referendum, or if five years have passed since the tax was defeated at a

referendum, the Madison County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax as provided in this act. The tax authorized by this act may be levied at a rate of up to three percent (3%) and shall apply to the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or to a business that offers to rent fewer than five units.

(c) Administration. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(d) Distribution and use of tax revenue. Madison County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Madison County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Madison County and shall use the remainder for tourism-related expenditures. The administrative expenses of the Authority may not exceed fifteen percent (15%) of the funds remitted to it under this subsection.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed five percent (5%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, or a coliseum and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism.

Section 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of three ex officio voting members as provided in subdivision (1) of this subsection and eight members appointed by the board of commissioners as provided in subdivisions (2) through (5) of this subsection. In order to be appointed to the Authority, an individual must

have demonstrated a commitment to promoting tourism in Madison County. The members of the Authority shall be:

- (1) The mayors of the Towns of Hot Springs, Mars Hill, and Marshall, to serve ex officio. Each mayor may designate another resident of the mayor's town to serve in his or her place.
- (2) Three residents of Madison County, one each recommended by the mayors of the Towns of Hot Springs, Mars Hill, and Marshall, respectively.
- (3) Two residents of Madison County selected by the Madison County Board of Commissioners.
- (4) The Chair of the Madison County Chamber of Commerce or an individual recommended by the Chair of the Madison County Chamber of Commerce.
- (5) Two residents of Madison County recommended by the Madison County Chamber of Commerce.

Members shall serve for a term of two years and shall serve without compensation. The resolution creating the Authority shall provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer of Madison County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. County administrative provisions. (a) Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-155. Uniform provisions for room occupancy taxes."

(a) Scope. -- This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the

purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to Madison County.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

H.B. 629

CHAPTER 103

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY AND TO MODIFY THE LAW LIMITING THE USE OF CENTER-FIRE RIFLES IN HARNETT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill, with a firearm or other deadly weapon, or to attempt to hunt, take, or kill, with a firearm or

other deadly weapon, any wild animal or wild bird on, from, or across the right-of-way of any public road, street, highway, or thoroughfare.

Section 2. It is unlawful to discharge a firearm from, onto, across, or down the right-of-way of any public road, street, highway, or thoroughfare.

Section 3. Section 1 of Chapter 791 of the 1983 Session Laws reads as rewritten:

"Section 1. It is unlawful to use a center-fire rifle in hunting on the land of another ~~or from any road or right-of-way adjoining the land of another~~ without the written permission of the owner or lessee of that land. The written permission shall be dated, it shall be effective for only 12 months after it is granted, it shall not be transferable, and it shall be carried on the person of anyone using a center-fire rifle to hunt."

Section 4. Nothing in this act prohibits a person from entering upon the right-of-way of a public road, street, highway, or thoroughfare for the sole purpose of retrieving hunting dogs or retrieving game that has fallen onto the right-of-way as a result of the person's hunting activity.

Section 5. Violation of Section 1 or 2 of this act is a Class 3 misdemeanor.

Section 6. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, by officers of the Highway Patrol, and by other peace officers with general subject matter jurisdiction.

Section 7. This act applies only to Harnett County.

Section 8. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified

H.B. 828

CHAPTER 104

AN ACT AMENDING THE CHARTER OF THE CITY OF WILSON TO INCREASE THE SETTLEMENT AUTHORITY OF THE CITY MANAGER.

The General Assembly of North Carolina enacts:

Section 1. Section 11.2 of the Charter of Wilson, being Chapter 136 of the 1969 Session Laws, as amended, reads as rewritten:

"Section 11.2. Settlement of claims by city manager. The city manager may, with the approval of the City Council, settle claims against the city for ~~(1) personal injuries or damages to property~~ when the amount involved does not exceed the sum of ~~One Hundred Dollars (\$100.00)~~ fifty thousand dollars (\$50,000) and does not exceed the actual loss ~~sustained, sustained, including loss of time, medical expenses, and any other expense actually incurred and~~ sustained, including loss of time, medical expenses, and any other expense actually incurred and ~~(2) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not exceed Five Hundred Dollars (\$500.00) and does not exceed the actual loss sustained.~~ Settlement of a claim by the city manager pursuant to this Section shall constitute a complete release of the

city from any and all damages sustained by the person involved in such the settlement in any manner arising out of the accident, occasion, or taking event complained of. All such settlements, and all such releases, releases and settlements exceeding two thousand dollars (\$2,000) shall be approved in advance by the city attorney."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law on the date it was ratified.

H.B. 643

CHAPTER 105

AN ACT TO AUTHORIZE THE CITY OF BELMONT TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the City of Belmont is granted certain contract powers as follows:

- (1) The City of Belmont may, by agreement, provide that certain property described in the agreement as the "Allen Plant Property" may not be involuntarily annexed by the City prior to December 30, 2009, under the General Statutes as they now exist or may be subsequently amended. The City of Belmont shall not seek to repeal this act upon its approval by the General Assembly. Nothing in this act impairs the right of the General Assembly to annex any such property by special local act.
- (2) Any agreement entered into as provided in subdivision (1) of this section is deemed by this section to be proprietary and commercial in nature and is specifically determined to be consistent with the public policy of the State of North Carolina.
- (3) Any agreement entered into as provided in subdivision (1) of this section is a continuing agreement and is binding on and enforceable against the current and future members of the City Council of the City of Belmont during the full term of such agreement and any extension thereof.
- (4) The parties to any agreement entered into as provided in subdivision (1) of this section are authorized by this section to modify, amend, and extend such agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the agreement.

Section 2. The City of Belmont may accept, as consideration for such agreement, "Payments in lieu of taxes".

Section 3. Payments in lieu of taxes under this act shall be annually computed based upon the tax assessment of the Allen Plant Property as determined by the North Carolina Department of Revenue, Ad Valorem Tax Division, pursuant to Article 23 of Chapter 105 of the General Statutes, with

the formula for making the computation being stated in the agreement referenced under Section 1 of this act.

Section 4. The agreement under Section 1 of this act shall apply to the Allen Plant Property described as follows:

Beginning at a point in the center line of Southpoint Road and running from said beginning point N 87-07 E-528.3 ft. to a concrete monument in the southeasterly corner of the property now or formerly of Louise B. Wilson; thence N 01-36 E-750.2 ft. to an iron pipe; thence N 0-46 E-349.4 ft. to an iron pin; thence N 0-27 E-259.8 ft. to a concrete monument; thence S 86-49 E-407.7 ft. to an iron pin; thence S 86-36 E-338.1 ft. to an iron pipe; thence S 86-59 E-230.2 ft. to an iron pin; thence S 87-06 E-374.6 ft. to a concrete monument; thence N 0-39 E-692.3 ft. to an iron pin; thence N 0-52 E-256.2 ft. to an iron pin; thence N 0-17 E-305.8 ft. to an iron pin; thence N 0-25 E-59.4 ft. to an iron pipe; thence S 85-45 E-1584.0 ft. to an iron pipe in the boundary of Duke Power Company's Lake Wylie Hydroelectric Project; thence with the boundary of Lake Wylie Hydroelectric Project approximately 11,822 ft. to an iron pin in the northeasterly corner of the property now or formerly Crescent Resources, Inc.; thence with the northerly line of said property N 89-29 W-2255.3 ft. to an iron pin; thence N 42-56 W-661.1 ft. to a concrete monument; thence S 69-18 W-1019.0 ft. to a concrete monument the southeasterly corner of the property of Vernie Holton (now or formerly); thence with the easterly line of the Vernie Holton property N 5-55 E-929.5 ft. to an iron pipe; thence S 80-42 W-448.3 ft. to a concrete monument; thence N 4-19 W-130.2 ft. to a concrete monument; thence S 85-28 W-10.0 ft. to an iron pin; thence N 2-00 W-169.9 ft. to a iron pin; thence S 85-44 W-252.8 ft. to a point in the center line of Southpoint Road; thence with the center line of Southpoint Road N 2-01 W-168.9 ft. to a point; thence N 82-51 E-248.8 ft. to an iron pin; thence N 7-09 W-124.2 ft. to a point; thence S 82-58 W-27.5 ft. to a concrete monument; thence N 10-42 E-206.3 ft. to an iron pin; thence N 81-12 E-149.2 ft. to a concrete monument; thence N 14-03 E-503.5 ft. to a concrete monument; thence N 14-58 W-226.8 ft. to an iron pin; thence N 18-27 E-178.9 ft. to a point in the center line of County Road No. 2703; thence with the center line of said road N 82-39 E-594.1 ft. to a point; thence S 5-29 W-255.7 ft. to an iron pin; thence N 83-25 E-126.8 ft. to an iron pin; thence N 5-29 E-255.7 ft. to a point in the center line of County Road No. 2703; thence with center line of said road N 82-39 E-216.4 ft. to an iron pin; thence N 5-52 E-230.0 ft. to an iron pin; thence S 82-52 W-101.9 ft. to an iron pin; thence N 5-29 E-448.6 ft. to a concrete monument; thence N 5-52 E-518.3 ft. to a concrete monument; thence N 78-16 W-208.1 ft. to a concrete monument; thence N 15-58 E-100.0 ft. to a concrete monument; thence N 73-08 W-197.5 ft. to a concrete monument; thence S 17-34 W-75.0 ft. to an iron pin; thence N 63-05 W-49.5 ft. to a concrete monument; thence S 82-47 W-158.9 ft. to a concrete monument; thence S 2-03 E-25.0 ft. to an iron pipe; thence S 82-49 W-300.0 ft. to an iron pipe; thence N 2-03 W-25.0 ft. to a concrete monument; thence S 82-49 W-196.9 ft. to a concrete monument; thence N 1-51 W-150.5 ft. to an I beam; thence N 82-58 E-196.4 ft. to an iron pipe; thence N 2-03 W-50.3 ft. to an iron pin; thence S 82-53 W-196.7 ft. to an iron rod; thence N 2-19 W-143.1 ft. to a

concrete monument; thence N 37-03 W-179.4 ft. to a concrete monument; thence N 56-22 E-150.2 ft. to an iron pipe; thence N 1-39 E-931.1 ft. to a concrete monument; thence N 60-57 W-316.8 ft. to a concrete monument; thence S 30-03 W-205.4 ft. to an iron pin; thence S 20-28 W-75.9 ft. to a nail and cap in Southpoint Road; thence N 66-10 W-5.8 ft. to a point in the center line of Southpoint Road; thence with the center line of said road N 12-52 E-264.1 ft. to a railroad spike in the center line of said road; thence N 77-08 W-506.1 ft. to an iron pin; thence S 12-51 W-365.9 ft. to a concrete monument; thence N 66-10 W-164.1 ft. to a concrete monument; thence S 15-24 W-301.8 ft. to a concrete monument; thence N 89-41 W-925.1 ft. to a concrete monument; thence S 20-44 W-99.8 ft. to a concrete monument; thence N 62-37 W-490.8 ft. to an angle iron; thence S 24-54 W-767.6 ft. to an angle iron; thence N 47-37 W-158.0 ft. to an iron pipe; thence N 55-37 W-373.3 ft. to an iron pipe in Duke Power Company's Allen Fishing Access Area; thence with the southeasterly line of the Duke Power Company Allen Fishing Access Area, approximately 1,051 to an iron pin; thence N 2-00 W-1612.7 ft. to a concrete monument; thence N 63-51 E-576.1 ft. to a point; thence with the arc of a circular curve to the right having a radius of 950.21 ft. an arc distance of 281.02 ft. to a point; thence N 80-50-30 E 81.95 ft. to a point; thence with the arc of a circular curve to the right, having a radius of 364.64 ft. an arc distance of 211.77 ft. to a point; thence S 65-53-00 E 195.05 ft. to a point; thence with the arc of a circular curve to the left having a radius of 195.28 ft., an arc distance of 162.51 ft.; thence N 66-26-14 E 205.06 ft. to a point; thence with the arc of a circular curve to the right having a radius of 307.75 ft. an arc distance of 108.96 ft. to a concrete monument, thence N 86-43 E-278.8 ft. to a concrete monument; thence N 86-39 E-316.3 ft. to the point of beginning, containing 1003.0 acres more or less.

SCHEDULE 1

(1) Certified Value: The parties agree that the tax equivalent payments made by Duke Power to Belmont with respect to its Allen Plant Property shall be based on the annual value of the Allen Plant Property as certified to the Gaston County Tax Department by the North Carolina Department of Revenue, Ad Valorem Tax Division, which value is hereinafter referred to as "Certified Value." The Certified Value for the then current year shall be used in computing the annual tax equivalent payments to be made by Duke Power to Belmont each year during the term of this Agreement.

(2) Tax Equivalent Payments: The tax equivalent payments shall be made annually for 12 consecutive calendar years. Each annual payment shall be made on or before the thirtieth day of June of each year beginning with the year 1998.

Each year, the dollar amount of the tax equivalent payments shall be determined as follows: (a) - Determination of amount of tax equivalency - Multiply the Certified Value of the Allen Plant Property for the then current year by the tax rate of Belmont which is in effect on January 1 of the then current year; and (b) - Determination of amount of payment in lieu - Multiply the determination of the amount of tax equivalency in (a) above, stated in dollars, by the percentage set out in the following table:

<u>Current Year</u>	<u>Percent</u>
1996	0
1997	0
1998	8.5
1999	17.0
2000	25.5
2001	34.0
2002	42.5
2003	51.0
2004	59.5
2005	68.0
2006	76.5
2007	85.0
2008	92.5
2009	100.00

Subject to any other adjustments required by the Agreement, the product, stated in dollars, shall be the dollar amount of the payment in lieu of taxes which shall be paid by Duke Power to Belmont for the then current year.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 1997.

Became law on the date it was ratified.

S.B. 130

CHAPTER 106

AN ACT AUTHORIZING THE TOWNS OF CORNELIUS, DAVIDSON, AND HUNTERSVILLE TO EXERCISE EXTRATERRITORIAL JURISDICTION WITHIN THEIR RESPECTIVE SPHERES OF INFLUENCE.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 161 of the 1991 Session Laws reads as rewritten:

"Section 1. Notwithstanding Section 12 of Chapter 860 of the 1971 Session Laws, as amended by Chapter 966 of the 1983 Session Laws (Regular Session 1984), the Towns of Matthews, Mint Hill, and Pineville and the City of Charlotte may exercise the powers granted by Article 19 of Chapter 160A of the General Statutes within extraterritorial areas in Mecklenburg County not to exceed one mile of their respective corporate limits, subject to the limitations set forth in this act. Notwithstanding Section 12 of Chapter 860 of the 1971 Session Laws, as amended by Section 1 of Chapter 966 of the 1983 Session Laws, the Towns of Cornelius, Davidson, and Huntersville may exercise in Mecklenburg County the powers granted by Article 19 of Chapter 160A of the General Statutes within the sphere of influence as defined by the annexation agreement described in Chapter 953 of the 1983 Session Laws, subject to the limitations set forth in this act."

Section 2. Ordinances authorized under this act may be adopted as provided by law at any time after ratification of this act but may not become effective prior to July 1, 1997.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law on the date it was ratified.

S.B. 282

CHAPTER 107

AN ACT TO ALLOW THE CITY OF CHARLOTTE TO RETAIN POSSESSION OF TOWED VEHICLES UNTIL THE OWNER PAYS THE TOWING FEE AND OVERDUE TICKETS OR POSTS A BOND.

The General Assembly of North Carolina enacts:

Section 1. Chapter VI, Subchapter A, Article II of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, is amended by adding a new section:

"Section 6.24. Towing Vehicles. The City may retain possession of any vehicle that was towed until the owner pays the towing fee and any related parking tickets and penalties or posts a bond in the amount of the towing fee and any related parking tickets and penalties. Payment of the towing fee and any related parking tickets and penalties or posting of a bond shall not constitute a waiver of a person's right to contest the towing or any related parking tickets and penalties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law on the date it was ratified.

H.B. 112

CHAPTER 108

AN ACT TO CREATE A SAFETY ZONE AROUND PUBLIC AND PRIVATE SCHOOLS IN CAMDEN COUNTY BY PROHIBITING HUNTING OR THE DISCHARGE OF FIREARMS FROM THE RIGHT-OF-WAY OF PUBLIC ROADS WITHIN ONE-HALF MILE OF A SCHOOL.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt or otherwise discharge a firearm from the right-of-way of public roads within one-half mile of any public or private school located in Camden County.

Section 2. It is unlawful for any person to discharge or cause to be discharged any firearm within one-half mile of any public or private school, toward any public or private school, or to cause any projectile discharged from a firearm to enter any public or private school grounds for any reason.

Section 3. This act does not apply to a person transporting a firearm on a State-maintained road or highway within or on any motor vehicle or to

any person who is actively engaged in retrieving dogs on a State-maintained road or highway.

Section 4. Violation of this act is a Class 3 misdemeanor.

Section 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 6. This act shall apply to Camden County only.

Section 7. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law on the date it was ratified.

H.B. 57

CHAPTER 109

AN ACT TO REQUIRE WITHHOLDING FROM CERTAIN PAYMENTS TO NONRESIDENTS IN ORDER TO PREVENT NONRESIDENTS FROM AVOIDING NORTH CAROLINA INCOME TAXES, TO MODIFY THE DEFINITION OF EMPLOYMENT WITH RESPECT TO AGRICULTURAL LABOR, AND TO CONFORM TO FEDERAL RULES ON WAGE WITHHOLDING BY FARMERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(15) reads as rewritten:

"(15) Wages. -- The term has the same meaning as in section 3401 of the Code except it does not include ~~remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market.~~ either of the following:

a. Remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market.

b. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11)."

Section 2. Article 4A of Chapter 105 of the General Statutes, as amended by Section 1 of this act, reads as rewritten:

"ARTICLE 4A.

"Withholding of Income Taxes from Wages and Payment of Income Tax by Withholding; Estimated Income Tax for Individuals.

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

(1) Compensation. -- Consideration a payer pays a nonresident individual or nonresident entity for personal services performed in this State.

(2) Contractor. -- Either of the following:

a. A nonresident individual who performs personal services in this State for compensation other than wages.

- b. A nonresident entity that provides for the performance of the following personal services in this State for compensation: services in connection with a performance, an entertainment, an athletic event, the creation of a film or television program, or the construction or repair of a building or highway.
- (3) Dependent. -- An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) Employee. -- An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. -- A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
 - a. Controls the payment of wages to an individual for services performed for another.
 - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
 - c. Pays wages on behalf of a unit of government that is not located in this State.
 - d. Pays wages for any other reason.
- (6) Individual. -- Defined in G.S. 105-134.1.
- (7) Miscellaneous payroll period. -- A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (8) Nonresident entity. -- Any of the following:
 - a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
 - b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
 - c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.
- (9) Pass-through entity. -- Defined in G.S. 105-163.010.
- (10) Payer. -- A person who, in the course of a trade or business, pays a nonresident individual or a nonresident entity compensation for personal services performed in this State.
- (11) Payroll period. -- A period for which an employer ordinarily pays wages to an employee of the employer.
- (12) Taxable year. -- Defined in section 441(b) of the Code.

- (13) Wages. -- The term has the same meaning as in section 3401 of the Code except it does not include either of the following:
- a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).
 - b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.
- (14) Withholding agent. -- An employer or a payer.
- (1) Code. -- Defined in G.S. 105-228.90.
- (2) Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s. 5.
- (3) Dependent. -- An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) Employee. -- An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed clergyman who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. -- A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
- a. Controls the payment of wages to an individual for services performed for another.
 - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
 - c. Pays wages on behalf of a unit of government that is not located in this State.
 - d. Pays wages for any other reason.
- (6), (7) Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s. 5.
- (8) Fiduciary. -- A guardian, a trustee, an executor, an administrator, a receiver, a conservator, or other person acting in a fiduciary capacity for another.
- (9) Fiscal year. -- Defined in section 441(e) of the Code.
- (10) Individual. -- A natural person.
- (11) Miscellaneous payroll period. -- A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (12) Payroll period. -- A period for which an employer ordinarily pays wages to an employee of the employer.
- (13) Person. -- Defined in G.S. 105-228.90.
- (14) Taxable year. -- Defined in section 441(b) of the Code.
- (14a) Secretary. -- The Secretary of Revenue.

(15) ~~Wages. -- The term has the same meaning as in section 3401 of the Code except it does not include either of the following:~~

a. ~~Remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market.~~

b. ~~The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).~~

"§ 105-163.2. ~~Withholding. Employers must withhold taxes.~~

(a) Withholding Required. -- An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the exemptions, deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(b) Withholding Tables. -- The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding exemption allowed by these tables and rules shall, as nearly as possible, approximate the exemptions, deductions, and credits to which an employee would be entitled under Article 4 of this Chapter. The Secretary shall ~~cause to be prepared and shall~~ promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of exemptions to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

(c) Withholding if No Payroll Period. -- If wages are paid with respect to a period ~~which that~~ is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, excluding Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid. (d) In paid. In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, excluding Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or

the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(d) Estimated Withholding. -- The Secretary may, by rule, authorize employers to estimate the wages to be paid to an employee during a calendar quarter, calculate the amount to be withheld for each period based on the estimated wages, and, upon payment of wages to the employee, adjust the withholding so that the amount actually withheld is the amount that would be required to be withheld if the employee's payroll period were quarterly.

(e) Alternatives to Tables. -- If the Secretary determines that use of the withholding tables would be impractical, would impose an unreasonable burden on an employer, or would produce substantially incorrect results, the Secretary may authorize or require an employer to use some other method of determining the amounts to be withheld under this Article. The alternative method authorized by the Secretary must reasonably approximate the predicted income tax liability of the affected employees. In addition, with the agreement of the employer and employee, the Secretary may authorize an employer to use an alternative method that results in withholding of a greater amount than otherwise required under this section.

The Secretary's authorization of an alternative method is discretionary and may be cancelled at any time without advance notice if the Secretary finds that the method is being abused or is not resulting in the withholding of an amount reasonably approximating the predicted income tax liability of the affected employees. The Secretary shall give an employer written notice of any cancellation and the findings upon which the cancellation is based. The cancellation becomes effective upon the employer's receipt of this notice or on the third day after the notice was mailed to the employer, whichever occurs first. If the employer requests a hearing on the cancellation within 30 days after the cancellation, the Secretary shall grant a hearing. After a hearing, the Secretary's findings are conclusive.

(e) The Secretary may, by regulations, authorize employers:

- (1) To estimate the wages which will be paid to any employee in any quarter of the calendar year;
- (2) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and
- (3) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee was quarterly.

(f) The Secretary is authorized in unusual circumstances wherein he finds that the use of the prescribed tables is impracticable or constitutes an unreasonable requirement of the employer to authorize such employer to use some other method of determining the amounts to be withheld under this Article, provided the amounts withheld under such other method will reasonably approximate the indicated income tax liability of his employees. Further, the Secretary may authorize an employer to use another method for

~~determining the amounts to be withheld under the provisions of this Article from the wages or salaries of groups of employees or individual employees if the circumstances are such that the use of the tables would produce substantially incorrect results. Any authorization of the use of a different method shall be subject to review and cancellation or alteration by the Secretary every twelfth month, and the Secretary may cancel such authorization or order an alteration of such method at any time upon a finding by him that such authorization is being abused or that such method is not resulting in the withholding of a sum reasonably approximating the indicated income tax liability of the employees, which finding may be made by the Secretary with or without notice or a hearing and shall be conclusive except as hereinafter provided. The Secretary shall notify the employer in writing of his finding and order thereon, and such notice shall be deemed to have been received by the employer on the third day after having been deposited in the mail and the employer shall thereafter abide by such order. Any employer feeling aggrieved by such order may thereafter apply for a hearing thereon before the Secretary, unless a hearing has been previously held, and upon such hearing the findings of the Secretary shall be deemed conclusive.~~

~~(g) The Secretary is authorized to provide by regulation, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be treated as other withholding amounts required to be deducted and withheld under this Article.~~

~~(h) The act of compliance with any of the provisions of this Article by a nonresident employer shall not constitute an act in evidence of and shall not be deemed to be evidence that such nonresident is doing business in this State.~~

~~"§ 105-163.3. Withholding in accordance with regulations. Certain payers must withhold taxes.~~

~~(a) Requirement. -- Every payer who pays a contractor more than six hundred dollars (\$600.00) during a calendar year shall deduct and withhold from compensation paid to a contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.~~

~~(b) Exemptions. -- The withholding requirement does not apply to the following:~~

- ~~(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.~~
- ~~(2) Compensation paid to an ordained or licensed member of the clergy.~~

~~(c) Returns; Due Date. -- A payer shall file a return with the Secretary on a form prepared by the Secretary and shall provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the payer pays compensation to a contractor. The~~

Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.

(d) Annual Statement; Report to Secretary. -- A payer required to deduct and withhold from a contractor's compensation under this section shall furnish to the contractor duplicate copies of a written statement showing the following:

- (1) The payer's name, address, and taxpayer identification number.
- (2) The contractor's name, address, and taxpayer identification number.
- (3) The total amount of compensation paid during the calendar year.
- (4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the calendar year. If the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the statement, the statement is due within 45 days after the payer's last payment of compensation to the contractor. The Secretary may require the payer to include additional information on the statement.

Each payer shall file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. -- If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. -- A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section must:

- (1) Not report the amount refunded on the annual statement required by subsection (d); and
- (2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person.

~~The manner of withholding and the amount to be deducted and withheld under G.S. 105-163.2 shall be determined in accordance with tables, rules, and regulations adopted by the Secretary. The withholding exemption allowed by these tables, rules, and regulations shall, as nearly as possible, approximate the exemptions, deductions, and credits to which an employee would be entitled under Article 4 of this Chapter.~~

~~"§ 105-163.4. Withholding does not create nexus.~~

~~A nonresident withholding agent's act in compliance with this Article does not in itself constitute evidence that the nonresident is doing business in this State.~~

~~No withholding from reimbursement for expenses.~~

~~The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer is not wages and is not subject to withholding under this Article.~~

~~"§ 105-163.5. Exemptions Employee exemptions allowable; certificates.~~

~~(a) An employee receiving wages shall be is entitled to the exemptions for which such the employee qualifies under the provisions of Article 4 of this Chapter.~~

~~(b) Every employee shall, on or before January 1, 1960, or at the time of commencing employment, whichever is later, furnish his or her employer with a signed withholding exemption certificate informing the employer of the exemptions the employee claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under the Code; but, in the event that Code. If the employee fails to file the exemption certificate the employer, in computing amounts to be withheld from the employee's wages, shall allow the employee the exemption accorded a single person with no dependents.~~

~~(c) Withholding exemption certificates shall take effect as of the beginning of the first payroll period which that ends on or after the date on which such the certificate is furnished, or if payment of wages is made without regard to a payroll period, then such the certificate shall take effect as of the beginning of the miscellaneous payroll period for which the first payment of wages is made on or after the date on which such the certificate is furnished; provided, that certificates furnished before January 1, 1960, shall be deemed to have been furnished on that date. furnished.~~

~~(d) If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is less than the amount of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee, the employee shall, within 10 days thereafter, furnish the employer with a new withholding exemption certificate relating to stating the amount of withholding exemptions which the employee then claims, which shall in no event exceed the amount to which he the employee is entitled on such that day. If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is greater than the amount of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to stating the amount of withholding exemptions which the employee then claims, which shall in~~

no event exceed the amount to which ~~he~~ the employee is entitled on such that day.

(e) ~~Withholding exemption certificates shall be in such form and contain such information as the Secretary may prescribe, but, insofar must be in the form and contain the information required by the Secretary. As far as practicable, the Secretary shall cause the form of such the certificates to be substantially similar to federal exemption certificates.~~

(f) In addition to any criminal penalty provided by law, if an individual furnishes his or her employer ~~with~~ an exemption certificate that contains information ~~which~~ has no reasonable basis and that results in a lesser amount of tax being withheld under this Article than would have been withheld if the individual had furnished reasonable information, the individual is subject to a penalty of fifty percent (50%) of the amount not properly withheld.

"§ 105-163.6. When employer must file returns and pay withheld taxes.

(a) General. -- A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. -- An employer who withholds an average of less than five hundred dollars (\$500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. -- An employer who withholds an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) Semiweekly. -- An employer who withholds an average of at least two thousand dollars (\$2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal employment taxes attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal employment taxes attributable to the same wages. The date set by the Code for depositing or paying federal employment taxes shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal employment taxes attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal employment taxes attributable to wages is an automatic

extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for a shortfall in the amount due if the employer would not be subject to a failure-to-deposit penalty had the shortfall occurred in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.

(e) Category. -- The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule.

"§ 105-163.7. *Statement to employees; information to Secretary.*

(a) Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall furnish to ~~each such~~ the employee in respect to the remuneration paid by ~~such the~~ employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if ~~his the~~ employment is terminated before the close of ~~such the~~ calendar year, within 30 days ~~from after~~ the date on which the last payment of remuneration is made, duplicate copies of a written statement showing the following:

- (1) ~~The name of such person;~~ employer's name, address, and taxpayer identification number.
- (2) ~~The name of the employee and his~~ employee's name and social security account number; number.
- (3) The total amount of wages; wages.
- (4) The total amount deducted and withheld under G.S. 105-163.2.

(b) The Secretary may require an employer to include information not listed in subsection (a) on the employer's written statement to an employee and to file the statement at a time not required by subsection (a). Every employer shall file an annual report with the Secretary that contains the information given on each of the employer's written statements to an employee and other information required by the Secretary. The annual report is due on the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code. The report required by this subsection is in lieu of the report required by G.S. 105-154.

(c) An employer who is required to file an annual report under subsection (b) of this section must report to the Secretary the following information concerning compliance with Article 1 of Chapter 97 of the General Statutes, the Workers' Compensation Act:

- (1) Whether the employer is required to maintain insurance or qualify as a self-insured employer under the provisions of G.S. 97-93.
- (2) Whether the employer is insured, self-insured through a group, or individually self-insured.

- (3) The name of the employer's workers' compensation insurance carrier and the number and expiration date of the insurance policy if the employer has workers' compensation insurance.
- (4) The name of the self-insured group, the group's third-party administrator, and the group's or employer's self-insured code number used by the Department of Insurance, if the employer is a member of a self-insured group.
- (5) The name of the employer's third-party administrator and the employer's self-insured code number used by the Department of Insurance, if the employer is individually self-insured.
- (6) Whether any information reported to the Secretary on a previous return has changed.

The Secretary must compile the information concerning workers' compensation reported by employers on an annual report and must give the compiled data to the Industrial Commission.

"§ 105-163.8. *Liability of ~~employer~~ withholding agents and others.*

(a) ~~Employer.~~ An employer Withholding Agents. -- A withholding agent who withholds the proper amount of income taxes under G.S. 105-163.2 this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. ~~An employer~~ A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. ~~An employer~~ A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to ~~a penalty equal to twenty-five percent (25%) of the amount of taxes not withheld or not timely paid to the Secretary.~~ the penalties provided in Article 9 of this Chapter.

(b) Others. -- A person who has a duty to deduct, account for, or pay taxes required to be withheld under G.S. 105-163.2 this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.

"§ 105-163.9. *Refund of overpayment to ~~employer~~ withholding agent.*

~~An employer~~ A withholding agent who pays the Secretary more under this Article than the Article requires the employer agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the employer withholding agent withheld the amount of the overpayment from the wages of the employer's employees, wages or compensation of the agent's employees or contractors. ~~An employer~~ A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266.

"§ 105-163.10. *Withheld amounts credited to ~~individual taxpayer~~ for calendar year.*

The amount deducted and withheld under G.S. 105-163.2 this Article during any calendar year from the wages or compensation of any an individual shall be allowed as a credit to that individual against the tax imposed by G.S. 105-134.2 Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a

nonresident entity shall be allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in that calendar year the calendar year during which the withholding occurred, the amount shall be allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. 105-163.3 or G.S. 105-163.7 and any other information the Secretary requires.

"§ 105-163.11 to 105-163.14. Repealed by Session Laws 1985, c. 443, s. 1, effective for taxable years beginning on or after January 1, 1986.

"§ 105-163.15. *Failure by individual to pay estimated income tax; penalty.*

(a) In the case of any underpayment of the estimated tax by an individual, there shall be added to the tax imposed under Article 4 for the taxable year an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment.

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier: (i) the fifteenth day of the fourth month following the close of the taxable year, or (ii) with respect to any portion of the underpayment, the date on which such portion is paid. A payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) For purposes of this section there shall be four required installments for each taxable year with the time for payment of the installments as follows:

- (1) First installment -- April 15 of taxable year;
- (2) Second installment -- June 15 of taxable year;
- (3) Third installment -- September 15 of taxable year; and
- (4) Fourth installment -- January 15 of following taxable year.

(d) Except as provided in subsection (e), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment. The term 'required annual payment' means the lesser of:

- (1) Ninety percent (90%) of the tax shown on the return for the taxable year, or, if no return is filed, ninety percent (90%) of the tax for that year; or
- (2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(e) In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under subsection (d), the amount of the required installment shall be the

annualized income installment, and any reduction in a required installment resulting from the application of this subsection shall be recaptured by increasing the amount of the next required installment determined under subsection (d) by the amount of the reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured.

In the case of any required installment, the annualized income installment is the excess, if any, of (i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year. The taxable income shall be placed on an annualized basis under rules prescribed by the Secretary. The applicable percentages for the required installments are as follows:

- (1) First installment -- twenty-two and one-half percent (22.5%);
- (2) Second installment -- forty-five percent (45%);
- (3) Third installment -- sixty-seven and one-half percent (67.5%);
and
- (4) Fourth installment -- ninety percent (90%).

(f) No addition to the tax shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under ~~Article 4A~~ this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Division II of Article 4 for the preceding taxable year.

(g) For purposes of this section, the term 'tax' means the tax imposed by Division II of Article 4 minus the credits against the tax allowed by ~~Article 4~~ this Chapter other than the credit allowed by this Article. The amount of the credit allowed under ~~Article 4A~~ this Article for withheld income tax for the taxable year is considered a payment of estimated tax, and an equal part of that amount is considered to have been paid on each due date of the taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld are considered payments of estimated tax on the dates on which ~~such~~ the amounts were actually withheld.

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding the other provisions of this section, an individual who is a farmer or fisherman for a taxable year is required to make only one installment payment of tax for that year. This installment is due on or before January 15 of the following taxable year but may be paid without penalty or interest on or before March 1 of that year. The amount of the installment payment shall be the lesser of:

- (1) Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or

- (2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

(j) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto. This section shall be applied to taxable years of less than 12 months in accordance with rules prescribed by the Secretary.

(k) This section shall not apply to any estate or trust.

"§ 105-163.16. Overpayment refunded.

If the amount of wages or compensation withheld at the source under G.S. 105-163.2 this Article exceeds the tax imposed by Article 4 of this Chapter against which the withheld tax is credited under G.S. 105-163.10, the excess is considered an overpayment by the employee, employee or contractor. If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax is credited under the provisions of this Article, the excess is considered an overpayment by the taxpayer. An overpayment shall be refunded as provided in Article 9 of this Chapter.

"§ 105-163.17. Administration.

~~The provisions of Article 9 of this Chapter apply to the amount of State income taxes this Article requires an employer to withhold and pay to the Secretary.~~

"§ 105-163.18. Rules and regulations.

~~The Secretary is hereby authorized to prescribe forms and make all rules and regulations which he deems necessary in order to achieve effective and efficient enforcement of this Article.~~

"§ 105-163.19 to 105-163.21. Repealed by Session Laws 1967, c. 1110, s. 4.

"§ 105-163.22. Reciprocity.

The Secretary of Revenue may, with the approval of the Attorney General, enter into agreements with the taxing authorities of states having income tax withholding statutes with such agreements to govern the amounts to be withheld from the wages and salaries of residents of such other state or states under the provisions of this Article when such other state or states grant similar treatment to the residents of this State. Such agreements may provide for recognition of the anticipated tax credits allowed under the provisions of G.S. 105-151 in determining the amounts to be withheld.

"§ 105-163.23. Withholding from federal employees.

The Secretary of Revenue is hereby designated as the proper official to make request for and enter into agreements with the Secretary of the Treasury of the United States to provide for the compliance with this Article by the head of each department or agency of the United States in withholding of State income taxes from wages of federal employees and paying the same to this State. The Secretary is hereby authorized, ~~empowered~~ empowered, and directed to ~~make request for~~ request and enter into such these agreements.

"§ 105-163.24. Construction of Article.

This Article shall be liberally construed in pari materia with Article 4 of this Chapter to the end that taxes levied by Article 4 shall be collected with respect to wages and compensation by withholding ~~from wages by employers agents' withholding of the appropriate amounts herein provided for and by individuals' payments in installments by individuals of income tax with respect to income other than wages, not subject to withholding.~~"

Section 3. G.S. 105-236(4) reads as rewritten:

"(4) Failure to Withhold or Pay Tax When Due. -- In the case of failure to withhold or pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars (\$5.00). This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax."

Section 4. G.S. 105-163.1(2), as amended by this act, reads as rewritten:

"(2) Contractor. -- Either of the following:

- a. A nonresident individual who performs personal services in this State for compensation other than wages.
- b. A nonresident entity that provides for the performance of the following personal services in this State for compensation: ~~services in connection with a performance, an entertainment, an athletic event, the creation of a film or television program, or the construction or repair of a building or highway.~~ compensation."

Section 5. G.S. 96-8(6)g. reads as rewritten:

- "g. On and after January 1, 1978, the term 'employment' includes services performed in agricultural labor when a person or employing unit (a) during any calendar quarter in the current calendar year or the preceding calendar year pays wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employs at least 10 individuals in employment in agricultural labor for some portion of the day. For purposes of this Chapter, the term 'agricultural labor'

includes all services performed: (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of crude gum (oleoresin) from a living tree, and the following products if processed by the original producer of crude gum from which derived; gum spirits of turpentine and gum resin, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; or (4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed; (B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in performance of service described in subparagraph (A), but only if such operators produced more than one half of the commodity with respect to which such service is performed. (C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; (D) on a farm operated for profit if such service is not in the course of the employer's trade or business. As used in this subsection, the term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Provided, such labor is not agricultural labor performed before January 1, 1995, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act."

Section 6. Any refunds of contributions, interest, or penalties made to employers because of the amendment in Section 5 of this act shall be made from the Special Employment Security Administration Fund provided for in G.S. 96-5(c).

Section 7. Sections 1, 5, and 6 of this act are effective when this act becomes law. Section 4 of this act becomes effective January 1, 1999. The remainder of this act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 4:30 p.m. on the 29th day of May, 1997.

S.B. 1023

CHAPTER 110

AN ACT TO AMEND THE POWERS AND DUTIES OF THE DEPARTMENT OF HUMAN RESOURCES TO REQUIRE THE DEPARTMENT TO ACT ON REQUESTS FOR WAIVERS TO COMMISSION OF HEALTH SERVICES RULES AND TO REPORT TO THE GENERAL ASSEMBLY ON PROGRESS AND RECOMMENDATIONS TO IMPROVE THE PROCESS FOR THE GRANTING OR DENIAL OF APPLICATIONS FOR LICENSURE AND WAIVERS.

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1997, Chapter 131D-10.6 of the General Statutes is amended to read:

"§ 131D-10.6. Powers and duties of the Department.

In addition to other powers and duties prescribed by law, the Department shall exercise the following powers and duties:

- (1) Investigate applicants for licensure to determine whether they are in compliance with licensing rules adopted by the Commission and the provisions of this Article.
- (2) Grant a license when an investigation shows compliance with this Article and Commission rules. The license shall be valid for a period not to exceed 24 months as specified by Commission rules and may be revoked or placed in suspended or provisional status sooner if the Department finds that licensure rules are not being met or upon a finding that the health, safety or welfare of children is threatened.
- (3) Administer and enforce the provisions of this Article and the rules of the Commission.
- (4) Appoint hearing officers to conduct appeals pursuant to this Article.
- (5) Prescribe the form in which application for licensure or a request for waiver of Commission rules shall be submitted.
- (6) Inspect facilities and obtain records, documents and other information necessary to determine compliance with the provisions of this Article and Commission rules.

- (7) Grant, deny, suspend or revoke a license or a provisional license, in accordance with Commission rules.
- (8) Act to grant or deny a request for waiver of Commission rules within 10 business days after its receipt. Grant a waiver for good cause to Commission rules that do not affect the health, safety, or welfare of children in facilities subject to licensure under this Article, in accordance with Commission rules.
- (9) Undertake a comprehensive study of the existing procedures for granting or denying an application for licensure or a request for waiver of Commission rules and report to the General Assembly on or before May 1, 1998, regarding its efforts to make the process more efficient and less time-consuming and its recommendations for any changes in the licensing laws or rules. The study shall include the development of a procedure that will ensure that the local Guardian Ad Litem Program is notified by the county department of social services of the request for a waiver if a guardian has been appointed for any child who may be affected by the waiver."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of May, 1997.

Became law upon approval of the Governor at 4:30 p.m. on the 29th day of May, 1997.

H.B. 474

CHAPTER 111

AN ACT TO CLARIFY WHICH PREINDUCEMENT EXPENDITURES MAY BE FINANCED WITH INDUSTRIAL REVENUE BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159C-6 reads as rewritten:

"§ 159C-6. Bonds.

Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose

signature shall appear on any bonds or coupons shall cease to be such an officer before the delivery of such the bonds, such the signature or such the facsimile shall nevertheless be valid and sufficient for all purposes the same as if he the person had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which such the bonds shall have been were issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such the deficiency. The

The proceeds of bonds shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

- (1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.
- (2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

However, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may only be reimbursed from bond proceeds if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide

for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either thereof, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 4:31 p.m. on the 29th day of May, 1997.

H.B. 122

CHAPTER 112

AN ACT TO AUTHORIZE THE DIRECTOR OF THE STATE CAPITOL POLICE AND THE CHIEF OF THE GENERAL ASSEMBLY POLICE TO PROVIDE FOR THE EVACUATION OF STATE AND LEGISLATIVE BUILDINGS AND GROUNDS IN THE EVENT OF EMERGENCY OR POTENTIALLY HAZARDOUS CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 36 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-341.1. Evacuation of State buildings and grounds.

The Director of the State Capitol Police, appointed by the Secretary pursuant to G.S. 143-340(22), or the Director's designee, shall exercise at all times those means that, in the opinion of the Director or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Director or the Director's designee may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds."

Section 2. Article 7 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-32.1A. Evacuation of legislative buildings and grounds.

The Chief of the General Assembly Police, or the Chief's designee, shall exercise at all times those means that, in the opinion of the Chief, or the Chief's designee, may be effective in protecting the State legislative buildings and grounds and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Chief, or the Chief's designee, may

employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of the legislative buildings and grounds."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 4:31 p.m. on the 29th day of May, 1997.

H.B. 153

CHAPTER 113

AN ACT RECOMMENDED BY THE CHILD FATALITY TASK FORCE
TO IMPROVE THE DEFINITION OF "DEPENDENT JUVENILE".

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(13) reads as rewritten:

"(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because ~~he~~ the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian, ~~due to physical or mental incapacity and the absence of an appropriate alternative child care arrangement,~~ custodian is unable to provide for the care or supervision, ~~supervision and lacks an appropriate alternative child care arrangement."~~

Section 2. This act becomes effective October 1, 1997, and applies to adjudications of dependency made on or after that date.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 4:32 p.m. on the 29th day of May, 1997.

H.B. 204

CHAPTER 114

AN ACT TO RAISE THE FORECLOSURE FILING FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

- | | |
|--|-----------------------------------|
| (1) Foreclosure under power of sale in deed of trust or mortgage | \$25.00 <u>\$30.00</u> |
|--|-----------------------------------|

~~Plus if the property is sold pursuant to the power of sale, an additional sum of thirty cents (30c) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price shall be collected. In no case shall the additional sum exceed two hundred dollars (\$200.00). If the property is sold under the~~

power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be collected. If the amount determined by the formula is more than two hundred dollars (\$200.00), a maximum two hundred dollar (\$200.00) fee will be collected.

(2)	Proceeding supplemental to execution	20.00
(3)	Confession of judgment	15.00
(4)	Taking a deposition	5.00
(5)	Execution	15.00
(6)	Notice of resumption of former name	5.00
(7)	Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate (except that oaths of office shall be administered to public officials without charge)1.00	
(8)	Bond, taking justification or approving	5.00
(9)	Certificate, under seal	2.00
(10)	Exemplification of records	5.00
(11)	Recording or docketing (including indexing) any document	
	-- first page	4.00
	-- each additional page or fraction thereof	.25
(12)	Preparation of copies	
	-- first page	1.00
	-- each additional page or fraction thereof	.25
(13)	Preparation and docketing of transcript of judgment	5.00
(14)	Substitution of trustee in deed of trust	5.00
(15)	Execution of passport application -- the amount allowed by federal law	
(16)	Repealed by Session Laws 1989, c. 783, s. 2.	
(17)	Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20	5.00
(18)	Filing the affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133	4.00
(19)	Repealed by Session Laws 1989, c. 783, s. 3."	

Section 2. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 4:33 p.m. on the 29th day of May, 1997.

H.B. 1098

CHAPTER 115

AN ACT TO AMEND THE PROCEDURE FOR MEDIATION OF SPECIAL EDUCATION DISPUTES.

The General Assembly of North Carolina enacts:

Section 1G.S. 115C-116(b) reads as rewritten:

"(b) Mediation. -- ~~Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate parent to attempt to resolve the dispute or disagreement. The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.~~

It is the policy of this State to encourage local educational agencies and parents, guardians, surrogate parents, custodians, and eligible students to seek informal resolution of disputes or disagreements regarding the identification of children with special needs and the provision of special education and related services before filing a request for a formal administrative review of the matter. To that end, the following provisions apply to the mediation of these disputes:

- (1) Purpose. -- The purpose of mediation is to clarify the concerns of the parents and to resolve disputes.
- (2) Definitions. -- As used in this subsection, the following terms have the following meanings:
 - a. 'Dispute' means a disagreement between the parties that is subject to review under subsection (c) of this section.
 - b. 'Mediation' means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
 - c. 'Mediator' means a neutral person who acts to encourage and facilitate a resolution of a dispute.
 - d. 'Parents' means parents, guardians, surrogate parents, custodians, and eligible students.
 - e. 'Parties' means the local educational agency and the parents.
- (3) Nonadversarial. -- The mediation shall be informal and nonadversarial as provided in G.S. 150B-22.
- (4) Rules of procedure. -- The mediator is encouraged to follow applicable procedures provided in G.S. 7A-38.1, G.S. 7A-38.2, and applicable rules adopted by the Supreme Court under G.S. 7A-38.1. The mediator may establish other procedures to

facilitate an informal resolution of the dispute. The mediator shall not render a decision or judgment as to the merits of the dispute.

- (5) Request for mediation. -- Before a request for formal administrative review is filed, mediation shall commence upon the request of either party, so long as the other party consents.
- (6) Selection of mediator. -- The parties shall agree to the selection of the mediator. The Exceptional Children Division of the Department of Public Instruction shall maintain a list of mediators who are certified or trained in resolving disputes under this subsection.
- (7) Notice of right to mediation. -- The local educational agency shall notify parents of their right to request mediation under this subsection.
- (8) Time periods tolled. -- Notwithstanding G.S. 150B-23, time periods related to the filing of a formal administrative review or the taking of any other action with respect to the dispute, including any applicable statutes of limitations, are tolled upon the filing of a request for mediation under this subsection until the mediation is completed or the mediator declares an impasse.
- (9) Good cause for continuance. -- A good faith effort by both parties to mediate the dispute is presumed to constitute good cause for a continuance so long as the administrative law judge does not find that the time delay for mediation would likely result in irreparable harm to one of the parties or to the child.
- (10) Inadmissibility of negotiations. -- Evidence of statements made and conduct occurring in a mediation shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation.
- (11) Mediator's fees. -- If mediation is requested before a request for formal administrative review is filed, the local educational agency shall pay the mediator's fees for one mediation session. If resolution is not reached in that session, the parties must agree to continue the mediation. The local educational agency shall pay any mediator fees for subsequent mediation sessions unless the parties agree otherwise.
- (12) Mediated settlement conference after a request for administrative review. -- In addition to mediation as provided by this subsection, the parties may participate in a mediated settlement conference as provided by G.S. 150B-23.1.
- (13) Promotion of other settlement procedures. -- The parties may agree to use other dispute resolution methods or to use mediation in other circumstances, including after a request for formal

administrative review is filed, to the extent permitted under State and federal law."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 4:34 p.m. on the 29th day of May, 1997.

H.B. 522

CHAPTER 116

AN ACT TO AMEND THE MEMBERSHIP OF THE STATE FIRE AND RESCUE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-78-1 reads as rewritten:

"§ 58-78-1. *State Fire and Rescue Commission created; membership.*

(a) There is created the State Fire and Rescue Commission of the Department, which shall be composed of 14 15 voting members to be appointed as follows:

- (1) The Commissioner shall appoint ~~eleven~~ 12 members, two from nominations submitted by the North Carolina State Firemen's Association, one from nominations submitted by the North Carolina Association of Fire Chiefs, one from nominations submitted by the Professional Firefighters of North Carolina Association, one from nominations submitted by the North Carolina Society of Fire Service Instructors, one from nominations submitted by the North Carolina Association of County Fire Marshals, one from nominations submitted by the North Carolina Fire Marshal's Association, two from nominations submitted by the North Carolina Association of Rescue and Emergency Medical Services, Inc., one mayor or other elected city official nominated by the President of the League of Municipalities, one county commissioner nominated by the President of the Association of County Commissioners, and one from the public at large;
- (2) The Governor shall appoint one member from the public at large; and
- (3) The General Assembly shall appoint two members from the public at large, one upon the recommendation of the Speaker of the House of Representatives pursuant to G.S. 120-121, and one upon the recommendation of the President Pro Tempore of the Senate pursuant to G.S. 120-121.

Public members may not be employed in State government and may not be directly involved in fire fighting or rescue services.

(b) Of the members initially appointed by the Commissioner, the nominees of the North Carolina State Firemen's Association and the nominees of the North Carolina Association of Fire Chiefs and the nominees of the Professional Firefighters of North Carolina Association and of the North Carolina Association of Rescue and Emergency Medical Services, Inc., shall serve three-year terms; the nominees from the North Carolina

Society of Fire Service Instructors, the North Carolina Association of County Fire Marshals, and the North Carolina Fire Marshal's Association shall serve two-year terms; and the mayor or other elected city official, the county commissioner, and the member from the public at large shall serve one-year terms. The Governor's initial appointee shall serve a three-year term. The General Assembly's initial appointees shall serve two-year terms. Thereafter all terms shall be for three years.

(c) Vacancies shall be filled by the original appointer in the same manner as the original appointment was made, except that vacancies in the appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(d) Appointed members shall serve until their successors are appointed and qualified.

(e) The following State officials, or their designees, shall serve by virtue of their offices as nonvoting members of the Commission: the Commissioner of Insurance, the Commissioner of Labor, the Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Environment, Health, and Natural Resources, and the President of the Department of Community Colleges.

(f) Members of the Commission shall receive per diem and necessary travel and subsistence allowances in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as appropriate."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of May, 1997.

Became law upon approval of the Governor at 4:35 p.m. on the 29th day of May, 1997.

H.B. 771

CHAPTER 117

AN ACT TO ALLOW THE BOARD OF A SANITARY DISTRICT WITH FOUR-YEAR TERMS THAT ARE NOT STAGGERED TO PROVIDE FOR STAGGERED TERMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-50(b) reads as rewritten:

"(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163-279, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the county board of commissioners so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The county board of commissioners shall notify the county board of elections of any decision made under this subsection.

If the sanitary district board consists of three members, the county commissioners may at any time increase the sanitary district board to five members. The increase shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the expansion to five members. The effective date of the expansion is the organizational meeting of the sanitary district board after the election.

The county commissioners may provide for staggering terms of an existing sanitary district board whose members serve two-year terms by providing for some of the members to be elected at the next election to be for four-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The sanitary district board may provide for staggering its terms if its members serve unstaggered four-year terms by providing for some of the members to be elected at the next election for two-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The county commissioners may provide for changing a sanitary district board from two-year terms to unstaggered four-year terms. This may be done either by providing that at the next election, all members shall be elected for four-year terms, or by extending the terms of existing members from two years to four years. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the change of length of terms."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

Became law upon approval of the Governor at 4:33 p.m. on the 29th day of May, 1997.

S.B. 34

CHAPTER 118

AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE EQUITABLE AND TO ALLOW THE DEPARTMENT OF REVENUE TO GIVE CITY FINANCE OFFICIALS INFORMATION NEEDED TO VERIFY THE ACCURACY OF A CITY'S DISTRIBUTION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-116.1. Distribution of gross receipts taxes to cities.

(a) Definitions. -- The following definitions apply in this section:

- (1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.
- (2) Percentage distribution amount. -- Three and nine-hundredths percent (3.09%) of the gross receipts derived by an electric power

company, a natural gas company, and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies, natural gas companies, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.
- (2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.
- (3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.
- (4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's adjusted 1995-96 amount and the city's 1990-91 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.
- (2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.
- (3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.
- (4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 2. G.S. 105-116 reads as rewritten:

"§ 105-116. *Franchise or privilege tax on electric power, natural gas, water, and sewerage companies.*

(a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or corporation, other than a municipal corporation, that is:

- (1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

- (2) A natural gas company engaged in the business of furnishing piped natural gas.
- (3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
- (4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power company or a natural gas company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. An electric power company or a natural gas company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall include the company's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The company's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The company's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a ~~municipality~~ city having an ownership share in a project established under that Chapter.

- (3) The amount of and price paid by the company for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power company or a natural gas company, the company's gross receipts from the sale within each municipality city of the commodities and services described in subsection (a).

A company shall report its gross receipts on an accrual basis. If a company's report does not state the company's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the company's taxable gross receipts to the city.

(c) Gas Special Charges. -- Gross receipts of a natural gas company do not include the following:

- (1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

- (2) Natural gas expansion surcharges imposed under G.S. 62-158.

(d) ~~Distribution. -- For the purpose of this subsection, the term "distribution amount" means three and nine hundredths percent (3.09%) of the taxable gross receipts derived during a period by an electric power company and a natural gas company from sales within a municipality of the commodities and services described in subsection (a) of this section. The Secretary shall distribute to each municipality the distribution amount for that municipality for the preceding calendar quarter less an amount equal to one-fourth of the excess of the distribution amount for that municipality for the period April 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall distribute the revenue within 75 days after the end of each quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality.~~

~~As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county. Part of the taxes imposed by this section on electric power companies and natural gas companies is distributed to cities under G.S. 105-116.1.~~

(e) Local Tax. -- So long as there is a distribution to municipalities of ~~the amount herein provided~~ cities from the tax imposed by this section, no municipality city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax

between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment."

Section 3. G.S. 105-120 reads as rewritten:

"§ 105-120. *Franchise or privilege tax on telephone companies.*

(a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or ~~corporation~~, corporation that owns or operates a business entity for the provision of local telecommunications service. The tax is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts are its receipts from providing local telecommunications service, including receipts from rentals and other similar charges, less its receipts from telecommunications access charges. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. A company that is liable for an average of less than three thousand dollars (\$3,000) a month in tax imposed by this section may, with the approval of the Secretary of Revenue, pay tax quarterly when filing a report. All other companies shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall state the company's gross receipts for the reporting period from providing local telecommunications service and from providing local telecommunications service within each municipality city served. If a company's report does not state the company's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the company's taxable gross receipts to the city. A company shall report its gross receipts on an accrual basis.

(c) Distribution. -- ~~For the purpose of this subsection, the term "distribution amount" means three and nine hundredths percent (3.09%) of the taxable gross receipts derived during a period from local telecommunications service provided within a municipality. The Secretary shall distribute to each municipality the distribution amount for that municipality for the preceding calendar quarter less an amount equal to one-fourth of the excess of the distribution amount for that municipality for the period April 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall distribute the revenue within 75 days after the end of each quarter. If a company's report does not state~~

~~the company's taxable gross receipts derived within a municipality, the Secretary shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality.~~

~~As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county. Part of the tax imposed by this section is distributed to cities under G.S. 105-116.1.~~

(d) No Local Tax. -- Counties and cities may not impose a license, franchise, or privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

(e) Definitions. -- For purposes of this section:

- (1) 'Local telecommunications service' means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications service, or private telecommunications service.
- (2) 'LATA' is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange areas.
- (3) 'InterLATA telecommunications' is telecommunications service provided between two or more LATAs.
- (4) 'Toll telecommunications service' means:
 - a. A telephonic quality communication for which:
 1. There is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication; and
 2. The charge is paid within the United States.
 - b. A service that entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area that is outside the local telephone exchange.
- (5) 'Private telecommunications service' means a service furnished to a subscriber that entitles the subscriber to exclusive or priority use of a communications channel or group of channels.
- (6) 'Telecommunications access charges' means charges paid to a provider of local telecommunications service for access to an interconnection with the local telephone exchange."

Section 4. G.S. 105-114(b) is amended by adding a new subdivision in the appropriate alphabetical order to read:

"(01) City. -- Defined in G.S. 105-228.90."

Section 5. If a city's hold-back amount calculated under G.S. 105-116.1(c), as enacted by this act, is less than the amount deducted from the city's 1995-96 franchise tax distribution, the Secretary must distribute two

times the amount of the difference to the city by July 15, 1997. This distribution is made to adjust retroactively the city's 1995-96 and 1996-97 franchise tax distributions. The amount needed to make the distribution required by this section shall be drawn from the amount of gross receipts taxes distributed to the cities that do not receive a distribution under this section in proportion to the amount received.

Section 6. G.S. 105-259(b) is amended by inserting a new subdivision to read:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts that were derived from sales within the city and used to determine the city's distribution under G.S. 105-116.1 or former distribution under G.S. 105-116 and G.S. 105-120."

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of May, 1997.

Became law upon approval of the Governor at 4:35 p.m. on the 29th day of May, 1997.

H.B. 202

CHAPTER 119

AN ACT TO INCREASE THE MINIMUM AMOUNT BY WHICH AN UPSET BID ON REAL PROPERTY IN JUDICIAL SALES AND EXECUTION SALES MUST EXCEED THE REPORTED SALE PRICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore sold, sold for an amount exceeding the reported sale price by ~~ten percent (10%) of the first \$1000 thereof plus a minimum of five percent (5%) thereof, of any excess above \$1000,~~ but in any event with a minimum increase of \$25, seven hundred fifty dollars (\$750.00). ~~such increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the sale was filed, within ten days after the filing of such report; such deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business.~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of

normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b)."

Section 2. G.S. 1-339.64(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore sold, sold for an amount exceeding the reported sale price by ten percent (10%) of the first \$1000 thereof plus a minimum of five percent (5%) thereof, of any excess above \$1000, but in any event with a minimum increase of \$25, seven hundred fifty dollars (\$750.00). such increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the sale was filed, within ten days after the filing of such report; such deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business. An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the upset bid filed on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b)."

Section 3. This act becomes effective January 1, 1998, and applies to judicial sales when the original order of sale was issued on or after that date and to execution sales when the execution was originally issued on or after that date. This act shall not apply to any judicial sale when the original order of sale has been issued prior to the effective date of this act or to any execution sale held pursuant to any execution originally issued prior to the effective date of this act.

In the General Assembly read three times and ratified this the 22nd day of May, 1997.

Became law upon approval of the Governor at 4:36 p.m. on the 29th day of May, 1997.

H.B. 414

CHAPTER 120

AN ACT RELATING TO SEVERANCE PAY FOR THE PURPOSES OF UNEMPLOYMENT INSURANCE BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(10) reads as rewritten:

"(10) Total and partial unemployment.

- a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:
 1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
 2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.
- b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
 1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
 2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
 3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
- c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has

received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or Commission approved vocational, educational, or training programs as defined in G.S. 96-13.

- d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe."

Section 2. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997.

In the General Assembly read three times and ratified this the 22nd day of May, 1997.

Became law upon approval of the Governor at 4:36 p.m. on the 29th day of May, 1997.

S.B. 106

CHAPTER 121

AN ACT TO ALLOW REGIONAL SALES OF PERSONAL PROPERTY SEIZED FOR UNPAID TAXES TO BE HELD IN ANY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-242(a) reads as rewritten:

"(a) Warrants for Collection of Taxes. -- If any tax levied by the State and payable to the Secretary has not been paid within 30 days after the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1), the Secretary may take either of the following actions to collect the tax:

- (1) The Secretary may issue a warrant or an order under the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, including penalties and interest, and the

cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant, not less than 60 days from the date of the warrant; the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

- (2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision, the levy upon the sale of personal property shall be governed by the laws regulating levy and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in ~~Wake County or in the county in which it was seized,~~ any county, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of May, 1997.

Became law upon approval of the Governor at 4:36 p.m. on the 29th day of May, 1997.

S.B. 167

CHAPTER 122

AN ACT TO ESTABLISH A STANDARD TIME PERIOD OF SIXTY DAYS IN WHICH TO OBTAIN OR CHANGE A DRIVERS LICENSE, A SPECIAL IDENTIFICATION CARD, OR A VEHICLE REGISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.6 is repealed.

Section 2. G.S. 20-7(a) reads as rewritten:

"(a) License Required. -- To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the

vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

- (1) Class A. -- A Class A license authorizes the holder to drive any of the following:
 - a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
 - b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- (2) Class B. -- A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
- (3) Class C. -- A Class C license authorizes the holder to drive any of the following:
 - a. A Class C motor vehicle that is not a commercial motor vehicle.
 - b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 30 60 days after becoming a resident."

Section 3. G.S. 20-7(f) reads as rewritten:

"(f) Expiration and Temporary License. -- The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed. A person may apply to the Division to renew a license during the

60-day period before the license expires. The Division may not accept an application for renewal made before the 60-day period begins.

~~Any person serving in the armed forces of the United States on active duty and holding a valid drivers license properly issued under this section and stationed outside the State of North Carolina may renew the license by making application to the Division by mail. Any other person, except a nonresident, who holds a valid drivers license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the~~

The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

- (1) Is serving on active duty in the armed forces of the United States and is stationed outside this State.
- (2) Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination and color photograph that would otherwise be required for the renewal of a drivers license, for the renewal and may impose in lieu thereof any conditions it considers appropriate to each particular application, finds advisable. A license renewed by mail is a temporary license that expires 30 60 days after the person to whom it is issued returns to this State."

Section 4. G.S. 20-7.1 reads as rewritten:

~~"§ 20-7.1. Notification Notice of change of address, address or name.~~

~~Whenever the holder of a license issued under the provision of G.S. 20-7 has a change in the address as shown on such license, he or she shall apply for a duplicate license within 60 days after such address has been changed. Provided, that if the licensee's mailing address has been changed by governmental action and there has been no actual change of residence location, upon giving notice in writing to the Division of Motor Vehicles in Raleigh within 60 days of this change of address, the licensee may use his current license or permit until its expiration or obtain a duplicate license or permit showing the new address upon payment of the required fee. No person shall be charged with having violated this section when only his mailing address has been changed by governmental action.~~

(a) Address. -- A person whose address changes from the address stated on a drivers license must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a duplicate license within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. -- A person whose name changes from the name stated on a drivers license must notify the Division of the change within 60 days after the change occurs and obtain a duplicate drivers license stating the new name.

(c) Fee. -- G.S. 20-14 sets the fee for a duplicate license."

Section 5. G.S. 20-37.12(e) reads as rewritten:

"(e) In accordance with G.S. 20-7, G.S. 20-7 sets the time period in which a new resident of North Carolina has 30 days to must obtain a license from the Division. The Commissioner may establish by rule the conditions under which the test requirements for a commercial drivers license may be waived for a new resident who is licensed in another state."

Section 6. G.S. 20-37.9 reads as rewritten:

"§ 20-37.9. Notification Notice of change of address- address or name.

Whenever the holder of a special identification card issued under G.S. 20-37.7 has a change in the address as shown on the special identification card, he or she shall apply for reissuance of a special identification card within 60 days after the address has been changed. The fee for reissuance of a special identification card is the same as the fee set in G.S. 20-37.7 for issuing a special identification card. If a change of address is the result of governmental action and there is no actual change of geographical location, the holder of the card is not required to change the address on the card until the Division issues the holder another card.

(a) Address. -- A person whose address changes from the address stated on a special identification card must notify the Division of the change within 60 days after the change occurs. If the person's address changed because the person moved, the person must obtain a new special identification card within that time limit stating the new address. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. -- A person whose name changes from the name stated on a special identification card must notify the Division of the change within 60 days after the change occurs and obtain a new special identification card stating the new name.

(c) Fee. -- G.S. 20-37.7 sets the fee for a special identification card."

Section 7. G.S. 20-67 reads as rewritten:

"§ 20-67. Notice of change of address or name.

(a) Address. -- Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, shall move from the A person whose address named in the application or shown upon a registration card or certificate of title, such person shall within 30 days thereafter notify the Division in writing of his old and new addresses. changes from the address stated on a certificate of title or registration card must notify the Division of the change within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card stating the new address but is not required to do so. A person who does not move but whose address changes due to governmental action may not be charged with violating this subsection.

(b) Name. -- Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall thereafter forward or cause to be forwarded to the Division the certificate of title and to make application for correction of the certificate on forms provided by the Division. A person whose name changes from the name stated on a certificate of title or registration card must notify the Division of the change

within 60 days after the change occurs. The person may obtain a duplicate certificate of title or registration card but is not required to do so.

(c) Fee. -- G.S. 20-85 sets the fee for a duplicate certificate of title or registration card."

Section 8. This act becomes effective December 1, 1997.

In the General Assembly read three times and ratified this the 21st day of May, 1997.

Became law upon approval of the Governor at 4:37 p.m. on the 29th day of May, 1997.

S.B. 247

CHAPTER 123

AN ACT PERTAINING TO CONFIDENTIALITY OF HEALTH CARE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-99 reads as rewritten:

"§ 131E-99. Confidentiality of health care contracts.

The financial terms ~~of~~ and other competitive health care information directly related to the financial terms in a health care services contract related to the provision of health care between a hospital or a medical school and a managed care organization, insurance company, employer, or other payer is confidential and not a public record under Chapter 132 of the General Statutes. Nothing in this section shall prevent an elected public body which has responsibility for the hospital or medical school from having access to this confidential information in a closed session. The disclosure to a public body does not affect the confidentiality of the information. Members of the public body shall have a duty not to further disclose the confidential information."

Section 2. Section 4 of Chapter 713 of the 1995 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ratification. Section 2 of this act shall not affect any litigation pending as of the effective date of ~~Section 2~~. Section 2, but otherwise shall apply to contracts entered into before, on, or after the effective date. ~~Section 2 of this act expires June 1, 1997.~~"

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 1997.

Became law upon approval of the Governor at 4:37 p.m. on the 29th day of May, 1997.

S.B. 305

CHAPTER 124

AN ACT TO REINSTATE THE OPTION THAT A LICENSED SOLICITOR OF CHARITABLE SOLICITATIONS MAY SUBMIT A CERTIFICATE OF DEPOSIT IN LIEU OF A SECURITY BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131F-16 is amended by adding a new subsection to read:

"(d1) In lieu of the bond required under subsection (d) of this section, a solicitor may submit a certificate of deposit in the amount as for a bond pursuant to subsection (d) of this section. The certificate of deposit shall be payable to the State and unrestrictively endorsed to the Department; or, in the case of a negotiable certificate of deposit, unrestrictively endorsed to the Department; or, in the case of a nonnegotiable certificate of deposit, assigned to the Department in a form satisfactory to the Department. Access to the certificate of deposit in favor of the State is subject to the same conditions as for a bond under subsection (d) of this section and shall extend for a period not less than four years after the solicitor ceases activities that are subject to this Chapter. The Department shall deliver to the State Treasurer certificates of deposit submitted under this section."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 1997.

Became law upon approval of the Governor at 4:37 p.m. on the 29th day of May, 1997.

S.B. 876

CHAPTER 125

AN ACT TO AMEND THE LAW PERTAINING TO CRIMINAL BACKGROUND CHECKS REQUIRED TO BE OBTAINED BY NURSING HOMES, ADULT CARE HOMES, AND HOME CARE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-40 reads as rewritten:

"§ 131D-40. Criminal history record checks required for certain applicants for employment.

(a) ~~Requirement.~~ Requirement; Adult Care Home. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be ~~disclosed~~. disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. -- An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal

history record check required by this section. A contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the ~~administrator of the adult care home or the administrator's designee~~ a contract agency of the adult care home shall consider all of the following factors in determining whether to hire the applicant:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the ~~administrator or the administrator's designee~~ adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. -- An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial

Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

Section 2. G.S. 131E-265 reads as rewritten:

"§ 131E-265. *Criminal history record checks required for certain applicants for employment.*

(a) Requirement. Requirement; Nursing Home or Home Care Agency. -- An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be ~~disclosed~~. disclosed, except to the applicant as provided in subsection (b) of this section.

(a) Requirement; Contract Agency of Nursing Home or Home Care Agency. -- An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, ~~the administrator of the nursing home or home care agency, or the administrator's designee, agency, or the contract agency of a nursing home or home care agency,~~ shall consider all of the following factors in determining whether to hire the applicant:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.

- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the ~~administrator or the administrator's designee~~, nursing home or home care agency, or the contract agency of the nursing home or home care agency. If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. -- An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, the term 'relevant offense' has the same meaning as in G.S. 131D-40."

Section 3. This act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 21st day of May, 1997.

Became law upon approval of the Governor at 4:37 p.m. on the 29th day of May, 1997.

S.B. 464

CHAPTER 126

AN ACT TO ALLOW THE CITY OF WINSTON-SALEM AND FORSYTH COUNTY TO SERVE COMPLAINTS AND ORDERS BY PUBLICATION UPON OWNERS WHOSE IDENTITIES OR WHEREABOUTS ARE KNOWN, BUT WHO CANNOT BE SERVED BY THE PUBLIC OFFICER AFTER EXERCISING REASONABLE DILIGENCE.

The General Assembly of North Carolina enacts:

Section 1. - G.S. 160A-445(a) reads as rewritten:

"(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or the identities or whereabouts of the owners or persons are known and the public officer, after exercising reasonable diligence, is unable to serve the complaint or order, and the public officer makes an affidavit to that effect, then the

serving of the complaint or order upon the ~~unknown~~ owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected."

Section 2. This act applies only to the City of Winston-Salem and Forsyth County.

Section 3. This act is effective when it becomes law and applies to complaints or orders served on or after that date.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law on the date it was ratified.

S.B. 499

CHAPTER 127

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO ADOPT ORDINANCES RELATING TO THE PARKING OR STANDING OF MOTOR VEHICLES NEAR FIRE HYDRANTS AND FIRE STATIONS AND IN FIRE LANES.

The General Assembly of North Carolina enacts:

Section 1. Article II of Subchapter A of Chapter VI of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, is amended by adding a new section to read:

"Section 6.26. Fire Safety Parking Regulations. Notwithstanding the provisions of Chapter 20 of the General Statutes or any other public or local laws to the contrary, the city council may adopt ordinances that prohibit parking or standing of motor vehicles within 15 feet in either direction of a fire hydrant or entrance to a fire station or within any area designated as a fire lane. Any ordinances adopted pursuant to this act may be enforced by authorized municipal authorities, including the Charlotte Fire Department, whether or not the vehicle is parked on public or private property, in the same manner that is used to enforce other parking laws and ordinances."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law on the date it was ratified.

H.B. 233

CHAPTER 128

AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM NEAR AN ELEMENTARY OR SECONDARY SCHOOL IN VANCE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is a Class 1 misdemeanor to discharge a firearm in the direction of a school within 1,000 feet of an elementary or secondary school except when used in the defense of person or property or when used pursuant to the lawful direction of law enforcement officers.

Section 2. This act applies only to Vance County.

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law on the date it was ratified.

H.B. 508

CHAPTER 129

AN ACT TO PROVIDE FOR ADDITIONAL REGULATION OF
PERSONAL WATERCRAFT ON THE UPPER CATAWBA RIVER
AND TO PROVIDE FOR NO WAKE ZONES ON LAKE NORMAN.

The General Assembly of North Carolina enacts:

Section 1. Chapter 75A of the General Statutes is amended by adding a new section to read:

"§ 75A-13.3. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between the hours from one hour after sunset to one hour before sunrise. For purposes of this section, 'personal watercraft' means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(a1) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow a person under the age of 16 to operate a personal watercraft. A person of at least 13 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

- (1) The person is accompanied by a person of at least 16 years of age who physically occupies the watercraft; or
- (2) The person possesses a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.

(a2) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (a1) of this section.

(b) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

- (1) Each person riding on or being towed behind such vessel is wearing a personal flotation device approved by the United States Coast Guard; and
- (2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator

at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(c) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property, including:

- (1) Unreasonably or unnecessarily weaving through congested vessel traffic;
- (2) Jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed; and
- (3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision

shall constitute reckless operation of a vessel as provided in G.S. 75A-10.

(d) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

(e) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section."

Section 2. G.S. 75A-13.2 is amended by adding a new subsection to read:

"(e) The provisions of this section shall not apply to that portion of the upper Catawba River covered by G.S. 75A-13.3."

Section 3. G.S. 75A-18 is amended by adding a new subsection to read:

"(e) A person under 16 years of age who operates a personal watercraft in violation of the provisions of G.S. 75A-13.3 is guilty of an infraction as provided in G.S. 14-3.1."

Section 4. It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a boat launching area, bridge, dock, pier, marina, boat storage structure, or boat service area on the waters of Lake Norman. No-wake speed is idle speed or slow speed creating no appreciable wake.

With regard to marking the no-wake speed zone established in this section, each of the boards of commissioners of Catawba, Iredell, Lincoln, and Mecklenburg Counties may place and maintain navigational aids and regulatory markers of a general nature on the waters of Lake Norman within the boundaries of each respective county. Provided the counties exercise their supervisory responsibility, they may delegate the actual process of placement or maintenance of the markers to some other agency, corporation, group, or individual. With regard to marking the restricted zones, markers may be placed and maintained by the individuals using the protected areas and facilities in accordance with the Uniform Waterway Marking System and any supplementary standards for that system adopted by the Wildlife Resources Commission.

This section is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes.

Section 5. Section 4 of this act is effective when it becomes law and is enforceable after markers complying with Section 7 are placed in the water. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law on the date it was ratified.

H.B. 548

CHAPTER 130**AN ACT TO ALLOW THE TOWN OF ELKIN TO CONVEY CERTAIN DESCRIBED PROPERTY AT PRIVATE SALE.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Elkin may convey to the Elkin-Jonesville Chamber of Commerce (also known as the Elkin-Jonesville-Arlington Chamber of Commerce) by private sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property:

Located at 116 East Market Street, Elkin, North Carolina.

Beginning at an iron stake on the corner of Market Street and Court Place and running South with Court Place 90 feet to an alley, thence with said alley West, 50 feet to E.F. McNeers corner, thence with E.F. McNeers line 90 feet North to Market Street, thence with Market Street 50 feet to the beginning, continuing 4,500 square feet more or less.

For a more specific description of this property see Elkin Land Co. map recorded in Book 29 page 600 Surry County Registry.

Said map is now recorded in Plat Book 1 at 204 of the Surry County Registry.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law on the date it was ratified.

S.B. 437

CHAPTER 131**AN ACT TO ALLOW THE TOWN OF ELKIN TO CONVEY CERTAIN DESCRIBED PROPERTY AT PRIVATE SALE.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Elkin may convey to the Elkin-Jonesville Chamber of Commerce (also known as the Elkin-Jonesville-Arlington Chamber of Commerce) by private sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property:

Located at 116 East Market Street, Elkin, North Carolina.

Beginning at an iron stake on the corner of Market Street and Court Place and running South with Court Place 90 feet to an alley, thence with said alley West, 50 feet to E.F. McNeers corner, thence with E.F. McNeers line 90 feet North to Market Street, thence with Market Street 50 feet to the beginning, continuing 4,500 square feet more or less.

For a more specific description of this property see Elkin Land Co. map recorded in Book 29 page 600 Surry County Registry.

Said map is now recorded in Plat Book 1 at 204 of the Surry County Registry.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 1997.

Became law on the date it was ratified.

H.B. 718

CHAPTER 132

AN ACT TO PROVIDE FOR THE HUNTING AND TRAPPING OF FOXES AND RACCOONS IN HYDE AND BEAUFORT COUNTIES, AND TO ALLOW THE USE OF SNARES WHEN TRAPPING FUR-BEARING ANIMALS IN THOSE COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, there is an open season for the trapping of foxes from the day after the close of gun deer season until February 28 of each year.

Section 2. Section 1 of Chapter 630 of the 1995 Session Laws reads as rewritten:

"Section 1. Notwithstanding the provisions of G.S. 113-291.2, there shall be no bag limits on the hunting or trapping of foxes or raccoons."

Section 3. Section 3 of Chapter 630 of the 1995 Session Laws reads as rewritten:

"Sec. 3. This act is effective upon ~~ratification and expires June 30, 1998.~~ ratification."

Section 4. Notwithstanding any other provision of law, connibear traps set during any trapping season established by the Wildlife Resources Commission and by the provisions of this act shall be visited every 72 hours and any animal caught in the trap removed.

Section 5. Notwithstanding any other provision of law, it is lawful to transport, buy, sell, barter, trade, or otherwise transfer possession or ownership of the carcass or pelt of foxes taken during any trapping season established by the Wildlife Resources Commission or by the provisions of this act without obtaining tags provided by the Wildlife Resources Commission.

Section 6. Notwithstanding any other provision of law, foxes and raccoons may be taken during any trapping season established by the Wildlife Resources Commission or by the provisions of this act with steel-jaw or leghold traps with trap chains of up to 18 inches in length.

Section 7. Notwithstanding G.S. 113-291.1(b)(2) or any other law, it is lawful to use snares when trapping fur-bearing animals during seasons for

trapping fur-bearing animals as established by the Wildlife Resources Commission and by the provisions of this act.

Section 8. This act applies only to Beaufort and Hyde Counties.

Section 9. This act becomes effective October 1, 1997, and expires June 1, 1999.

In the General Assembly read three times and ratified this the 3rd day of June, 1997.

Became law on the date it was ratified.

H.B. 312

CHAPTER 133

AN ACT UPDATING THE STATUTORY MORTALITY TABLES USED AS EVIDENCE TO ESTABLISH THE EXPECTANCY OF CONTINUED LIFE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-46 reads as rewritten:

"§ 8-46. *Mortuary Mortality tables as evidence.*

Whenever it is necessary to establish the expectancy of continued life of any person from any period of ~~such the~~ person's life, whether ~~he be the~~ person is living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation, as evidence, with other evidence as to the health, constitution and habits of ~~such the~~ person, of such expectancy represented by the figures in the columns headed by the words 'completed age' and 'expectation' respectively:

Completed Age	Expectation
0	68.40 75.8
1	69.64 75.4
2	68.78 74.5
3	67.86 73.5
4	66.92 72.5
5	65.98 71.6
6	65.02 70.6
7	64.06 69.6
8	63.09 68.6
9	62.12 67.6
10	61.15 66.6
11	60.18 65.6
12	59.20 64.6
13	58.22 63.7
14	57.25 62.7
15	56.29 61.7
16	55.34 60.7
17	54.39 59.8
18	53.45 58.8
19	52.52 57.9
20	51.58 56.9
21	50.65 56.0

22	49.72	55.1
23	48.80	54.1
24	47.87	53.2
25	46.94	52.2
26	46.02	51.3
27	45.09	50.4
28	44.17	49.4
29	43.25	48.5
30	42.33	47.5
31	41.41	46.6
32	40.49	45.7
33	39.58	44.7
34	38.67	43.8
35	37.76	42.9
36	36.85	42.0
37	35.95	41.0
38	35.06	40.1
39	34.17	39.2
40	33.29	38.3
41	32.42	37.4
42	31.57	36.5
43	30.72	35.6
44	29.87	34.7
45	29.04	33.8
46	28.21	32.9
47	27.38	32.0
48	26.56	31.1
49	25.76	30.2
50	24.96	29.3
51	24.18	28.5
52	23.40	27.6
53	22.64	26.8
54	21.89	25.9
55	21.15	25.1
56	20.42	24.3
57	19.70	23.5
58	18.99	22.7
59	18.29	21.9
60	17.61	21.1
61	16.94	20.4
62	16.29	19.7
63	15.65	18.9
64	15.02	18.2
65	14.40	17.5
66	13.79	16.8
67	13.20	16.1
68	12.61	15.5
69	12.04	14.8
70	11.48	14.2

71	10.93	13.5
72	10.39	12.9
73	9.86	12.3
74	9.35	11.7
75	8.84	11.2
76	8.35	10.6
77	7.87	10.0
78	7.40	9.5
79	6.96	9.0
80	6.53	8.5
81	6.12	8.0
82	5.75	7.5
83	5.39	7.1
84	5.05	6.6
85 <u>and over</u>	4.70	6.6
86	4.38	
87	4.08	
88	3.79	
89	3.54	
90	3.30	
91	3.08	
92	2.89	
93	2.72	
94	2.56	
95	2.43	
96	2.32	
97	2.21	
98	2.10	
99	2.01	
100	1.91	
101	1.83	
102	1.75	
103	1.67	
104	1.60	
105	1.53	
106	1.46	
107	1.40	
108	1.35	
109	1.29	

Section 2. G.S. 8-47 reads as rewritten:

"§ 8-47. *Present worth of annuities.*

Whenever it is necessary to establish the present worth or cash value of an annuity to a person, payable annually during his the person's life, such present worth or cash value may be ascertained by the use of the following table in connection with the mortuary mortality tables established by law, the first column representing the number of years the annuity is to run and the second column representing the present cash value of an annuity of one dollar for such number of years, respectively:

No. of Years Annuity is to Run	Cash Value of the Annuity of \$1
1	\$ 0.943
2	1.833
3	2.673
4	3.465
5	4.212
6	4.917
7	5.582
8	6.210
9	6.802
10	7.360
11	7.887
12	8.384
13	8.853
14	9.295
15	9.712
16	10.106
17	10.477
18	10.828
19	11.158
20	11.470
21	11.764
22	12.042
23	12.303
24	12.550
25	12.783
26	13.003
27	13.211
28	13.406
29	13.591
30	13.765
31	13.929
32	14.084
33	14.230
34	14.368
35	14.498
36	14.621
37	14.737
38	14.846
39	14.949
40	15.046
41	15.138
42	15.225
43	15.306
44	15.383
45	15.456
46	15.524
47	15.589

48	15.650
49	15.708
50	15.762
51	15.813
52	15.861
53	15.907
54	15.950
55	15.991
56	16.029
57	16.065
58	16.099
59	16.131
60	16.161
61	16.190
62	16.217
63	16.242
64	16.266
65	16.289
66	16.310
67	16.331

The present cash value of the annuity for a fraction of a year may be ascertained as follows: Multiply the difference between the cash value of the annuities for the preceding and succeeding full years by the fraction of the year in decimals and add the sum to the present cash value for the preceding full year. When a person is entitled to the use of a sum of money for life, or for a given time, the interest thereon for one year, computed at four and one half percent (4 1/2%), may be considered as an annuity and the present cash value be ascertained as herein provided: Provided, the interest rate in computing the present cash value of a life interest in land shall be six percent (6%).

Whenever the ~~mortuary~~ mortality tables set out in G.S. 8-46 are admissible in evidence in any action or proceeding to establish the expectancy of continued life of any person from any period of ~~such the~~ person's life, whether ~~he be the person~~ the person is living at the time or not, the annuity tables herein set forth shall be evidence, but not conclusive, of the loss of income during the period of life expectancy of ~~such the~~ the person."

Section 3. G.S. 46-25 reads as rewritten:

"§ 46-25. *Sale of standing timber on partition; valuation of life estate.*

When two or more persons own, as tenants in common, joint tenants or copartners, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, or where one or more persons own a remainder or reversionary interest in a tract of land, subject to a life estate, then in any such case in which there is standing timber upon any such land, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall

be entitled to receive his or her portion of the net proceeds of sales, to be ascertained under the ~~mortuary~~ mortality tables established by law: Provided further, that prior to a judgment allowing a life tenant to sell the timber there must be a finding that the cutting is in keeping with good husbandry and that no substantial injury will be done to the remainder interest."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 9:50 a.m. on the 4th day of June, 1997.

H.B. 348

CHAPTER 134

AN ACT TO PROVIDE FOR A CIDER AND VINEGAR
MANUFACTURER PERMIT TO BE ISSUED BY THE ALCOHOLIC
BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1100 reads as rewritten:

"§ 18B-1100. *Commercial permits.*

The Commission may issue the following commercial permits:

- (1) Unfortified winery
- (2) Fortified winery
- (3) Limited winery
- (4) Brewery
- (5) Distillery
- (6) Fuel alcohol
- (7) Wine importer
- (8) Wine wholesaler
- (9) Malt beverages importer
- (10) Malt beverages wholesaler
- (11) Bottler
- (12) Salesman
- (13) Vendor representative
- (14) Nonresident malt beverage vendor
- (15) Nonresident wine vendor
- (16) Winery special show
- (17) Liquor importer/bottler ~~permit~~, permit
- (18) Cider and vinegar manufacturer."

Section. 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1114.2. *Effect of cider and vinegar manufacturer permit.*

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit."

Section 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

- (1) On-premises malt beverage permit -- \$200.00.
- (2) Off-premises malt beverage permit -- \$200.00.
- (3) On-premises unfortified wine permit -- \$200.00.
- (4) Off-premises unfortified wine permit -- \$200.00.
- (5) On-premises fortified wine permit -- \$200.00.
- (6) Off-premises fortified wine permit -- \$200.00.
- (7) Brown-bagging permit -- \$200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be \$100.00.
- (8) Special occasion permit -- \$200.00.
- (9) Limited special occasion permit -- \$25.00.
- (10) Mixed beverages permit -- \$750.00.
- (11) Culinary permit -- \$100.00.
- (12) Unfortified winery permit -- \$150.00.
- (13) Fortified winery permit -- \$150.00.
- (14) Limited winery permit -- \$150.00.
- (15) Brewery permit -- \$150.00.
- (16) Distillery permit -- \$150.00.
- (17) Fuel alcohol permit -- \$50.00.
- (18) Wine importer permit -- \$150.00.
- (19) Wine wholesaler permit -- \$150.00.
- (20) Malt beverage importer permit -- \$150.00.
- (21) Malt beverage wholesaler permit -- \$150.00.
- (22) Bottler permit -- \$150.00.
- (23) Salesman permit -- \$25.00.
- (24) Vendor representative permit -- \$25.00.
- (25) Nonresident malt beverage vendor permit -- \$50.00.
- (26) Nonresident wine vendor permit -- \$50.00.
- (27) Any special one-time permit under G.S. 18B-1002 -- \$25.00.
- (28) Winery special event permit -- \$100.00.
- (29) Mixed beverages catering permit -- \$100.00.
- (30) Guest room cabinet permit -- \$750.00.
- (31) Liquor importer/bottler permit -- \$250.00.
- (32) Cider and vinegar manufacturer permit -- \$100.00."

Section 4. G.S. 18B-1107(a) reads as rewritten:

"(a) Authorization. -- The holder of a wine wholesaler permit may:

- (1) Receive, possess and transport shipments of fortified and unfortified wine;
- (2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
- (3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
- (4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the Commission.

- (5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits; provided that each bottle is marked 'out-of-date' by the wholesaler."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 9:50 a.m. on the 4th day of June, 1997.

H.B. 28

CHAPTER 135

AN ACT TO ALLOW THE FIFTH MEMBER OF A COUNTY BOARD OF SOCIAL SERVICES TO BE SELECTED BY MAJORITY VOTE OF THE FOUR OTHER MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-3(b) reads as rewritten:

"(b) Five-Member Board. -- The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth member, member by majority vote of the membership. If the four a majority of the four are unable to agree upon the fifth member, the senior regular superior court judge of the county shall make the selection."

Section 2. This act is effective when it becomes law and applies to elections taking place on or after this date.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 9:51 a.m. on the 4th day of June, 1997.

H.B. 456

CHAPTER 136

AN ACT TO REPEAL THE LAW REQUIRING THE REGISTER OF DEEDS TO DISTRIBUTE INFORMATION ON THE DANGERS OF DRUG AND ALCOHOL ABUSE DURING PREGNANCY WITH EACH MARRIAGE LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-11.1 reads as rewritten:

"§ 161-11.1. *Fees for Children's Trust Fund.*

(a) Five dollars (\$5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

(b) ~~The register of deeds shall distribute with each marriage license issued a pamphlet promoting the prevention of fetal alcohol syndrome, cocaine~~

~~exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother. The pamphlet to be distributed shall be prepared and paid for by the Department of Environment, Health, and Natural Resources, which shall forward the requisite number of copies to the register of deeds of each county. The funds necessary to prepare and distribute this pamphlet shall not come from the Children's Trust Fund."~~

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 9:52 a.m. on the 4th day of June, 1997.

H.B. 455

CHAPTER 137

AN ACT TO AMEND THE GENERAL STATUTES CONCERNING THE
DETECTION, PREVENTION, CARE, AND TREATMENT OF
GLAUCOMA AND DIABETES.

The General Assembly of North Carolina enacts:

Section 1. The title to Part 3 of Article 7 of Chapter 130A of the General Statutes reads as rewritten:

"Part 3. Glaucoma and Diabetes."

Section 2. G.S. 130A-221 reads as rewritten:

"§ 130A-221. *Department authorized to establish program.*

(a) The Department ~~shall~~ may establish and administer a program for the detection and prevention of glaucoma and diabetes and the care and treatment of persons with glaucoma and diabetes. The program may include:

- (1) Education of patients, health care personnel and the public;
- (2) Development and expansion of services to persons with glaucoma and diabetes; and
- (3) Provision of supplies, equipment and medication for detection and control of glaucoma and diabetes.

(b) The Commission is authorized to adopt rules necessary to implement the program."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 9:53 a.m. on the 4th day of June, 1997.

H.B. 402

CHAPTER 138

AN ACT TO PROVIDE THAT AN INFRACTION FOR CERTAIN
ALCOHOL-RELATED OFFENSES MAY BE EXPUNGED FROM A
PERSON'S RECORD AFTER A DISMISSAL OR UPON A FINDING
OF NOT RESPONSIBLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction under G.S. 18B-302(i), and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 9:54 a.m. on the 4th day of June, 1997.

S.B. 323

CHAPTER 139**AN ACT TO ALLOW AN INCOME TAX CREDIT FOR EXPENDITURES TO REHABILITATE HISTORIC STRUCTURES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.42 reads as rewritten:

"§ 105-130.42. *Credit for rehabilitating an historic structure.*

(a) Income-Producing Historic Structure. -- A taxpayer who ~~makes is allowed a federal income tax credit under section 47 of the Code for making qualifying rehabilitation expenditures as defined in section 47 of the Code with respect to~~ for a certified historic structure located in this State is allowed as a credit against the tax imposed by this Division ~~an amount equal to one-fourth of the federal income tax credit under the Code for which the taxpayer is eligible for those rehabilitation expenditures.~~ Division. The amount of the credit is twenty percent (20%) of the expenditures that qualify for the federal credit.

(b) Nonincome-Producing Historic Structure. -- A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a certified historic structure located in this State is allowed a credit against the tax imposed by this Division. The amount of the credit is thirty percent (30%) of the rehabilitation expenses. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection. The following definitions apply in this subsection:

- (1) Certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.
 - (2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to the commencement of the work. The expenditures must, within a 24-month period, exceed twenty-five thousand dollars (\$25,000). The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process.
 - (3) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.
 - (4) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.
- (c) Credit Limitations. -- The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, allowed, except payments of tax made by or on behalf of the taxpayer."

Section 2. G.S. 105-151.23 reads as rewritten:

"§ 105-151.23. *Credit for rehabilitating an historic structure.*

(a) Income-Producing Historic Structure. -- A taxpayer who makes is allowed a federal income tax credit under section 47 of the Code for making qualifying rehabilitation expenditures as defined in section 47 of the Code with respect to for a certified historic structure located in this State is allowed as a credit against the tax imposed by this Division an amount equal to one-fourth of the federal income tax credit under the Code for which the taxpayer is eligible for those rehabilitation expenditures. Division. The amount of the credit is twenty percent (20%) of the expenditures that qualify for the federal credit.

(b) Nonincome-Producing Historic Structure. -- A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a certified historic structure located in this State is allowed a credit against the tax imposed by this Division. The amount of the credit is thirty percent (30%) of the rehabilitation expenses. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic

Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection. The following definitions apply in this subsection:

- (1) Certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.
- (2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to the commencement of the work. The expenditures must, within a 24-month period, exceed twenty-five thousand dollars (\$25,000). The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process.
- (3) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.
- (4) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.
- (c) Credit Limitations. -- The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division~~, allowed, except payments of tax made by or on behalf of the taxpayer."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 9:55 a.m. on the 4th day of June, 1997.

S.B. 207

CHAPTER 140

AN ACT TO MODIFY THE CRIMINAL HISTORY RECORD CHECKS LAW TO MAKE CLARIFYING CHANGES AND TO REQUIRE A CRIMINAL BACKGROUND CHECK ON HOME HEALTH AGENCY APPLICANTS ONLY FOR CERTAIN POSITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-10.2 reads as rewritten:**"§ 131D-10.2. Definitions.**

For purposes of this Article, unless the context clearly implies otherwise:

- (1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.
- (2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.
- (3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.
- (4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.
- (5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (6) 'Commission' means the Social Services Commission.
- (6a) 'Criminal History' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.
- (7) 'Department' means the Department of Human Resources.
- (8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.
- (9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused,

abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.

- (9a) 'Foster Parent' means any individual who is 18 years of age or older who ~~permanently resides in a family foster home licensed by the State and any such individual applying to provide family foster care.~~ is licensed by the State to provide foster care.
- (10) 'Person' means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other organization or enterprise doing business in this State, whether or not for profit.
- (11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.
- (12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.
- (13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care."

Section 2. G.S. 131D-10.3A reads as rewritten:

"§ 131D-10.3A. ~~Mandatory criminal checks of foster parents.~~ checks.

(a) Effective January 1, 1996, in order to ensure the safety and well-being of any child placed for foster care in a home, the Department shall ensure that the criminal histories of all foster parents, individuals applying for licensure as foster parents, and individuals 18 years of age or older who reside in a family foster home, are checked and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made, and, based on the criminal history check, a determination is made as to whether the foster parents, and other individuals required to be checked, are fit for a foster child to reside with them in the home. The Department shall ensure that, as of the effective date of this act, all ~~foster parents~~ individuals required to be checked are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all ~~foster parents~~ individuals who have been are required to be checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit ~~a foster parent~~ an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that ~~the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.~~ the safety and well-being of a child placed in the home for foster care would be at risk based on the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.

(d) The Department of Justice shall provide to the Department of Human Resources the criminal history of the ~~foster parent~~ individuals specified in subsection (a) of this section obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the ~~foster parent individual~~ to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent individual~~ to be checked. The fingerprints of the ~~foster parent individual to be checked~~ shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the ~~foster parent individual~~ individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

~~FOSTER PARENT~~

MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO PROVIDE FOSTER CARE RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records

of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have ~~responsibility for the safety and well-being of children, a foster child reside with you,~~ you shall have the opportunity to ~~complete,~~ complete or challenge the accuracy of, of the information contained in the SBI or FBI identification records.

If ~~you are denied~~ licensure is denied or ~~your~~ the foster home license is revoked by the Department of Human Resources as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any ~~foster-parent person~~ who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to ~~prohibit the foster parent from providing~~ deny or revoke a license to provide foster care. Any ~~foster-parent person~~ who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and any person applying to be licensed as a foster parent, and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the ~~foster-parent's criminal history.~~ history of all individuals required to be checked. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of ~~the foster-parent's~~ an individual's criminal history to the foster parent, parent or any other individual required to be checked. The Department shall also notify the ~~foster-parent individual~~ of the ~~foster-parent's~~ individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity

established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on foster-parents individuals required by this section and shall charge the Department of Human Resources a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Human Resources, shall bear the costs of implementing this section."

Section 3. G.S. 114-19.4 reads as rewritten:

"§ 114-19.4. Criminal record checks of ~~foster-parents~~ for foster care.

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the foster-parent individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster-parent individual to be checked. The fingerprints of the foster-parent individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 4. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by a nursing home ~~or a home care agency~~ licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit

a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 3:30 p.m. on the 4th day of June, 1997.

S.B. 370

CHAPTER 141

AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-567.31(b) reads as rewritten:

"(b) The provisions of this ~~Article~~ Article, except ~~G.S. 1-567.38 and G.S. 1-567.39~~, G.S. 1-567.38, 1-567.39, and 1-567.65, apply only if the place of arbitration is in this State."

Section 2. G.S. 1-567.48 reads as rewritten:

"§ 1-567.48. Equal treatment of ~~parties~~ parties; representation by attorney.

(a) The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

(b) A party has the right to be represented by an attorney at any proceeding or hearing under this Article. A waiver of this right prior to the proceeding or hearing is ineffective."

Section 3. This act becomes effective October 1, 1997, and applies to proceedings initiated on or after that date.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 3:35 p.m. on the 4th day of June, 1997.

S.B. 266

CHAPTER 142

AN ACT TO AUTHORIZE THE PRODUCTION AND SALE OF RED DEER.

The General Assembly of North Carolina enacts:

Section 1. Article 49H of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 49H.

"Production and Sale of Fallow ~~Deer~~, Deer and Red Deer."

"§ 106-549.97. Regulation of fallow deer and red deer by Department of Agriculture; certain authority of North Carolina Wildlife Resources Commission not affected; affected; definitions.

(a) The Department of Agriculture shall regulate the production and sale of fallow deer and red deer for food purposes. The Board of Agriculture shall adopt rules for the production and sale of fallow deer and red deer for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling fallow deer or red deer, or both, for food purposes.

~~As used in this section, 'fallow deer' (*Dama dama* spp.) means a small European deer raised commercially for production and sale for food purposes.~~

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation of live fallow deer and live red deer and may adopt rules to prevent the release or escape of fallow deer or red deer, or both, upon finding that it is necessary to protect live fallow deer or live red deer, or both, or to prevent damage to the native deer population or its habitat.

(c) The following definitions apply in this Article:

(1) Fallow deer. -- A member of the *Dama dama* species.

(2) Red deer. -- A member of the *Cervus elephus* species.

"§ 106-549.98. Inspection fees.

The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of fallow deer as required by Article 49B of Chapter 106 of the General Statutes. The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of red deer as required by Article 49B of Chapter 106 of the General Statutes."

Section 2. G.S. 113-129(1b) reads as rewritten:

"(1b) Big Game. -- Bear, wild boar, wild turkey, and deer, not to include fallow deer or red deer raised for production and sale under G.S. 106-549.97."

Section 3. G.S. 113-129(7c) reads as rewritten:

"(7c) Game Animals. -- Bear, fox, rabbit, squirrel, wild boar, and deer, not to include fallow deer or red deer raised for production and sale under G.S. 106-549.97; bobcat, opossum, and raccoon except when trapped in accordance with provisions relating to fur-bearing animals."

Section 4. G.S. 106-549.15(14) reads as rewritten:

"(14) 'Meat food product' means any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, bison, or fallow deer, or red deer, excepting products that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been

considered by consumers as products of the meat food industry, and that are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, goats, and bison."

Section 5. G.S. 106-549.15(22) reads as rewritten:

"(22) 'Renderer' means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, fallow deer, red deer, horses, mules, or other equines, except rendering conducted under inspection under this Article."

Section 6. G.S. 106-549.17 reads as rewritten:

"§ 106-549.17. *Inspection of animals before slaughter; humane methods of slaughtering.*

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering

and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

- (1) In the case of cattle, calves, fallow deer, red deer, bison, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or
- (2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."

Section 7. G.S. 106-549.18 reads as rewritten:

"§ 106-549.18. *Inspection; stamping carcass.*

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag as 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to ~~do~~ so destroy any such condemned carcass or part thereof."

Section 8. G.S. 106-549.19 reads as rewritten:

"§ 106-549.19. *Application of Article; place of inspection.*

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection

under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article."

Section 9. G.S. 106-549.22 reads as rewritten:

"§ 106-549.22. *Rules and regulations of Board.*

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected and Passed.'"

Section 10. G.S. 106-549.23 reads as rewritten:

"§ 106-549.23. *Prohibited slaughter, sale and transportation.*

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

- (1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;
- (2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;
- (3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:
 - a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or

- b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or
- (4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded."

Section 11. G.S. 106-549.25 reads as rewritten:

"§ 106-549.25. *Slaughter, sale and transportation of equine carcasses.*

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared."

Section 12. G.S. 106-549.26 reads as rewritten:

"§ 106-549.26. *Inspection of establishment; bribery of or malfeasance of inspector.*

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other

thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a Class I felony which may include a fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000); and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction thereof, be summarily discharged from office and may be punished by a fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000)."

Section 13. G.S. 106-549.27(a) reads as rewritten:

"(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

- (1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor
- (2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, fallow deer, red deer, bison, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats, fallow deer, red deer, bison, or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture."

Section 14. G.S. 106-549.28 reads as rewritten:

"§ 106-549.28. *Regulation of storage of meat.*

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines,

capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

Section 15. G.S. 113-291.3(b) is amended by adding a new subdivision to read:

"(8) The sale of the edible parts of deer raised domestically in another state may be transported into this State and resold as a meat product for human consumption when the edible parts have passed inspection in the other state by that state's inspection agency or the United States Department of Agriculture."

Section 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 3:35 p.m. on the 4th day of June, 1997.

S.B. 409

CHAPTER 143

AN ACT TO PERMIT AIRPORT LAW ENFORCEMENT AGENCIES TO ENTER COOPERATION AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

- (1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and
- (2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E~~, 74E; and
- (3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 3:36 p.m. on the 4th day of June, 1997.

S.B. 673

CHAPTER 144

AN ACT TO AMEND THE DEFINITION OF LAW ENFORCEMENT OFFICER FOR PURPOSES OF ELIGIBILITY FOR BENEFITS

UNDER THE LOCAL GOVERNMENTAL EMPLOYEES'
RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-21(11b) reads as rewritten:

"(11b) 'Law Enforcement Officer' means a full-time paid employee of an employer who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or for the general enforcement of the criminal laws of the State or for serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. 'Law enforcement officer' also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board."

Section 2. G.S. 143-166.50(a)(3) reads as rewritten:

"(3) 'Law-enforcement officer' means a full-time paid employee of an employer, who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes, and who possesses the power of arrest by virtue of an oath administered under the authority of the State. possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a law enforcement officer under the provisions of Chapter 17C of the General Statutes or certified as a deputy sheriff under the provisions of Chapter 17E of the General Statutes. 'Law enforcement officer' also means the sheriff of the county. The number of paid personnel employed as law enforcement officers by a law enforcement agency may not exceed the number of law enforcement positions approved by the applicable local governing board."

Section 3. This act becomes effective July 1, 1997, and applies to all persons enrolled in the Local Governmental Employees' Retirement System on or after that date.

In the General Assembly read three times and ratified this the 27th day of May, 1997.

Became law upon approval of the Governor at 3:36 p.m. on the 4th day of June, 1997.

AN ACT TO REVISE THE REIMBURSEMENT METHODOLOGY FOR HOSPITAL CHARGES UNDER WORKERS' COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-26(b) reads as rewritten:

"(b) (Effective June 30, 1997 -- see editor's note) Hospital Fees. -- ~~Payment for medical compensation rendered by a hospital participating in the State Plan shall be equal to the payment the hospital receives for the same treatment and services under the State Plan. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission. Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer or managed care organization insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.~~

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be equal to the payment the hospital is authorized to receive for the same treatment or service under the State Plan, provided that:

- (1) Payment for inpatient hospital inpatient services provided on or after July 1, 1997, and on or before December 31, 1997, shall not be less than a minimum of ninety percent (90%) nor more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form.
- (2) Payment for inpatient hospital services provided on or after January 1, 1998, through and including December 31, 1998, shall be not more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than a minimum percentage of such charges that the Commission determines would have been required to have produced an average payment rate equal to ninety-three and one-tenth percent (93.1%) of aggregate charges for all inpatient claims processed by the Commission during the fiscal year ending June 30, 1997.
- (3) Payment for inpatient hospital services provided on or after January 1, 1999, shall be not more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage established annually by the Commission as follows:
 - a. Beginning in the third quarter (July, August, and September) of 1998, and annually thereafter, the Commission shall review data from the State Plan to ascertain the aggregate hospital itemized charges and aggregate amounts authorized for payment by the State Plan (including payments actually made

by the State Plan and deductible, coinsurance, or other amounts for which the patient/insured may have been liable) for inpatient hospital claims paid to participating hospitals by the State Plan during the immediately preceding fiscal year ending June 30. The Commission shall then utilize the data described in the preceding sentence to calculate the extent, if any, to which aggregate State Plan authorized payments were less than aggregate charges on inpatient hospital claims paid by the State Plan during the preceding fiscal year.

- b. Beginning in the third quarter (July, August, and September) of 1998, and annually thereafter, the Commission shall calculate aggregate hospital itemized charges and aggregate payments authorized by the Commission on all inpatient hospital workers' compensation claims approved for payment by the Commission during the preceding fiscal year ending June 30.
- c. Based on the data described in sub-subdivisions a. and b. of this subdivision, the Commission shall on or before December 1, 1998, and December 1 of each subsequent year establish a minimum percentage that will result in a payment rate for inpatient workers' compensation cases that in the aggregate bears a percentage relationship to hospital itemized charges that is equal to the State Plan relationship between aggregate payments authorized and aggregate itemized charges for claims paid by the State Plan during the preceding fiscal year ending June 30. The percentage rate established shall be effective for the next succeeding calendar year beginning January 1 of that year.

Notwithstanding any other provisions of law, the Commission's determination of payment rates under this subsection shall:

- (1) Comply with the procedures for adoption of a fee schedule established in G.S. 97-26(a);
- (2) Include publication on or before October 1 of each year of the proposed payment rate, and a summary of the data and calculations on which the rate is based;
- (3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and
- (4) Be deemed to constitute a final permanent rule under Article 2A of Chapter 150B for purposes of judicial review under Article 4 of that Chapter.

Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission.

A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payers."

Section 2. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 28th day of May, 1997.

Became law upon approval of the Governor at 3:37 p.m. on the 4th day of June, 1997.

H.B. 871

CHAPTER 146

AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE MINIMUM WAGE, TO PERMIT EMPLOYERS SUBJECT TO THE STATE MINIMUM WAGE TO TAKE THE SAME TIP CREDIT AS FEDERALLY COVERED EMPLOYERS, AND TO EXEMPT COMPUTER PROFESSIONALS FROM MINIMUM WAGE AND OVERTIME PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.3 reads as rewritten:

"§ 95-25.3. *Minimum wage.*

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~three dollars and eighty cents (\$3.80) per hour effective January 1, 1992, and four dollars and twenty-five cents (\$4.25) per hour effective January 1, 1993, the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, except as otherwise provided in this section.~~

(b) In order to prevent curtailment of opportunities for employment, the wage rate for full-time students, learners, apprentices, and messengers, as defined under the Fair Labor Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above, rounded to the lowest nickel.

(c) The Commissioner, in order to prevent curtailment of opportunities for employment, may, by regulation, establish a wage rate less than the wage rate in effect under section (a) which may apply to persons whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving ~~aid to families with dependent children provided under Part A of Title IV of the Social Security Act, Work First Family Assistance, or who are receiving supplemental security benefits under Title XVI of the Social Security Act.~~

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the Employment Security Commission.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks.

(e) The Commissioner, in order to prevent curtailment of opportunities for employment, and to not adversely affect the viability of seasonal establishments, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to any employee employed by an establishment which is a seasonal amusement or recreational establishment, or a seasonal food service establishment.

(f) ~~Tips earned by a tipped employee may be counted as wages only up to fifty percent (50%) of the applicable minimum wage for each hour worked~~ the amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement.

(g) In order to prevent curtailment of opportunities for employment, an employer may, in lieu of the minimum wage prescribed by this section, pay a training wage to eligible persons in accordance with G.S. 95-25.3A."

Section 2. G.S. 95-25.14(b) reads as rewritten:

"(b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

- (1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;
- (2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;
- (3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;
- (4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;
- (5) Repealed by Session Laws 1989, c. 687, s. 2.
- (6) Any person while participating in a ridesharing arrangement as defined in ~~G.S. 136-44.21~~ G.S. 136-44.21;
- (7) Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act."

Section 3. This act becomes effective August 1, 1997.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 4:15 p.m. on the 4th day of June, 1997.

H.B. 988

CHAPTER 147

AN ACT TO RESTORE OFFICIAL RECOGNITION TO THE INDIANS
OF PERSON COUNTY AND TO PROVIDE THEM WITH
REPRESENTATION ON THE COMMISSION OF INDIAN AFFAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 71A of the General Statutes is amended by adding a new section to read:

"§ 71A-7. Indians of Person County; rights, privileges, immunities, obligations, and duties.

The Indians who are descendants of those Indians living in Person County for whom the High Plains Indian School was established, shall, from and after July 20, 1971, be designated and officially recognized as the Indians of Person County, North Carolina, and shall continue to enjoy all their rights, privileges, and immunities as citizens of the State as now or hereafter provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law."

Section 2. G.S. 143B-407 reads as rewritten:

"§ 143B-407. North Carolina State Commission of Indian Affairs -- membership; term of office; chairman; compensation.

(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and ~~18~~ 19 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; the Indians of Person County; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Indians of Person County, one; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. The initial appointment from the Indians of Person County shall expire on June 30, 1999. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 4:20 p.m. on the 4th day of June, 1997.

S.B. 869

CHAPTER 148

AN ACT TO TRANSFER TECHNOLOGY-RELATED FUNCTIONS OF STATE GOVERNMENT TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

Section 1. (a) The following agencies, including all functions, powers, and duties of each, are transferred from the Office of State Controller to the Department of Commerce:

(1) Information Resource Management Commission.

(2) State Information Processing Services.

(3) State Telecommunications Services.

(b) Budgetary responsibilities for the agencies and services listed in subsection (a) of this section are transferred from the Office of State Controller to the Department of Commerce. The positions, funds, equipment, supplies, records, and other property to support the functions transferred by this section are also transferred from the Office of State Controller to the Department of Commerce. Any disputes arising out of this transfer shall be resolved by the Director of the Budget.

Section 2. Part 23 of Article 9 of Chapter 143B of the General Statutes is recodified as Part 16 of Article 10 of Chapter 143B of the General Statutes, to be entitled "Information Technology Related State Government Functions", and G.S. 143B-426.21 is recodified as G.S. 143B-472.41.

Section 3. G.S. 143B-426.39(14), (15), and (16) are recodified as G.S. 143B-472.42(1), (2), and (3).

Section 4. G.S. 143B-426.39A is recodified as G.S. 143B-472.43.

Section 5. G.S. 143B-426.40 is recodified as G.S. 143B-472.44.

Section 6. Part 16 of Article 10 of Chapter 143B of the General Statutes, as created by this act, reads as rewritten:

"Part 16. Information Technology Related Functions.

"§ 143B-472.41. *Information Resource Management Commission.*

(a) Creation; Membership. -- The Information Resource Management Commission is created in the ~~Office of the State Controller, Department of Commerce.~~ The Commission consists of the following members:

- (1) Four members of the Council of State, appointed by the Governor.
- (2) The Secretary of Administration.
- (3) The State Budget Officer.
- (4) Two members of the Governor's cabinet, appointed by the Governor.
- (5) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (7) The Chair of the Governor's Committee on Data Processing and Information Systems.
- (8) The Chair of the State Information Processing Services Advisory Board.
- (9) The Chair of the Criminal Justice Information Network Governing Board.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The two initial cabinet members appointed by the Governor and the two initial citizen members appointed by the General Assembly shall each serve a term beginning September 1, 1992, and expiring on June 30, 1995. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service of the Commission if they are no longer cabinet members.

The appointees by the Governor from the Council of State shall each serve a term beginning on September 1, 1992, and expiring on June 30, 1993. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The Secretary of ~~Administration~~ Commerce shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency.

(b) Powers and Duties. -- The Commission has the following powers and duties:

- (1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.
- (2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.
- (3) To review and approve biennially the information technology plans of the executive agencies, including their plans for the procurement and use of personal computers and workstations.
- (4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency information technology plans.
- (5) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation.
- (6) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.
- (7) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.
- (8) To develop and promote a policy and procedures for the fair and competitive procurement of information technology consistent with the rules of the Department of Administration and consistent with published industry standards for open systems that provide agencies with a vendor-neutral operating environment where different information technology hardware, software, and networks operate together easily and reliably.

(c) Meetings. -- The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly.

"§ 143B-472.42. Powers and duties of the Secretary of Commerce.

The Secretary of Commerce shall:

- (1) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the ~~State Controller~~ Secretary of Commerce may in cooperation with affected State agency heads, do such of the following things as ~~he~~ the Secretary of Commerce deems necessary and advisable:
 - a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
 1. Central telephone systems and telephone networks;
 2. Teleprocessing systems;
 3. Teletype and facsimile services;
 4. Satellite services;
 5. Closed-circuit TV systems;
 6. Two-way radio systems;
 7. Microwave systems;
 8. Related systems based on telecommunication technologies.
 - b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item 'a.' of this subdivision.
 - c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.
 - d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item 'a.' of this subdivision.
 - e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.
 - f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.
 - g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.
 - h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
 - i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

- j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
- k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services training to users within State agencies in telecommunications technology and systems.
- l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.
- m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

- (2) Provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under subdivision (14) (1) of this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.
- (3) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:
 - a. Nonprofit educational institutions;
 - b. ~~The Microelectronics Center of North Carolina ('MCNC');~~ MCNC;
 - c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;
 - d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; or
 - e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the ~~Office of State Controller,~~ Department of Commerce, or the MCNC to be classified as a public utility as that term is

defined in G.S. 62-3(23)a.6. Nor shall the State, the ~~Office of State Controller, Department of Commerce,~~ or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision ~~(16)a. through subdivision (16)e.~~ a. through e. of this subdivision shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer.

"§ 143B-472.43. Information Highway Grants Advisory Council.

(a) The Information Highway Grants Advisory Council is created within the ~~Office of the State Controller, Department of Commerce.~~ The Council shall consist of 18 members as follows:

- (1) Five members to be appointed by the Governor.
- (2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.
- (3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.
- (4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.
- (5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.
- (6) One representative from The University of North Carolina to be designated by the President of The University of North Carolina.
- (7) One representative from the ~~Office of the State Controller, to be designated by the State Controller, Department of Commerce,~~ to be designated by the Secretary of Commerce.
- (8) One representative from the North Carolina School of Science and Mathematics, to designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the members of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(b) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochairs. A majority of the members of the Council shall constitute a quorum. The ~~Office of the State Controller Department of Commerce~~ shall provide staff and space to the Council.

(c) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and ~~Office of the State Controller Department of Commerce~~ on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council

shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The ~~State Controller~~ Secretary of Commerce shall notify the Information Highway Grants Advisory Council as to whom the intended grant recipients are 15 days prior to awarding the grants.

"§ 143B-472.44. *State Information Processing Services.*

With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina, the ~~Office of State Controller~~ Department of Commerce shall have the following powers and duties:

- (1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services;
- (2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services;
- (3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the ~~Office of the State Controller~~ Department of Commerce ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services;
- (4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network;
- (5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this subdivision to facilitate more efficient and economic use of information technology in these departments; and
- (6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.
- (7) To provide cities, counties, and other local governmental units with access to State Information Processing Services information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

The Department of Revenue is authorized to deviate from this subsection's requirements that departments or agencies consolidate information processing functions on equipment owned, controlled or under custody of the State Information Processing Services. All deviations from this subsection's requirements shall be reported in writing within 15 days by the

Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding. The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the State Information Processing Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the State Information Processing Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this subdivision until safeguards for the data's security satisfactory to the department head and the ~~State Controller~~ Secretary of Commerce have been designed and installed and are fully operational. Nothing in this subsection may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This subdivision does not affect the provisions of G.S. 147-64.6, G.S. 147-64.7, or ~~G.S. 143B-426.39(14), 143B-472.42(1)~~. Notwithstanding any other provision of law, the ~~Office of the State Controller~~ Department of Commerce shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission."

Section 7. G.S. 115C-102.5(b)(4) reads as rewritten:

"(4) ~~The Deputy Controller for the Information Resources Management Commission in the Office of the State Controller~~ A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;".

Section 8. G.S. 20-123(57) reads as rewritten:

"(57) The Information Resource Management Commission, as established by G.S. ~~143B-426.21, 143B-472.41.~~"

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 1997.

Became law upon approval of the Governor at 4:30 p.m. on the 4th day of June, 1997.

H.B. 790

CHAPTER 149

AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1(b) reads as rewritten:

"(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

- (1) The check or draft is delivered to a check taker.
- (2) The name and mailing address of the check passer are written or printed on the check or ~~draft~~, draft, and the check taker or acceptor shall not be required to write or print the race or gender of the check passer on the check or draft.
- (3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.
- (4) The license or identification card number of the check passer appears on the check or draft.
- (5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

- (6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107.

The affidavit must be kept in the case file (attached to the criminal pleading in the case).

- (7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:
- State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.
 - Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.
 - Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).
 - Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).
 - Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor."

Section 2. This act becomes effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 4:50 p.m. on the 4th day of June, 1997.

S.B. 58

CHAPTER 150

AN ACT TO ADD ALAMANCE, BEAUFORT, BURKE, CALDWELL, CASWELL, CRAVEN, CUMBERLAND, HYDE, MCDOWELL, ORANGE, PITT, ROCKINGHAM, UNION, AND WILKES COUNTIES TO THOSE COUNTIES IN WHICH IT IS UNLAWFUL TO REMOVE OR DESTROY ELECTRONIC COLLARS ON DOGS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 699 of the 1993 Session Laws reads as rewritten:

"Sec. 4. This act applies only to Alamance, Beaufort, Burke, Caldwell, Caswell, Craven, Cumberland, Haywood, Hyde, Jackson, McDowell, Orange, Pitt, Rockingham, Swain, Macon, Henderson, and Transylvania ~~Transylvania, Union, and Wilkes~~ Counties.

Section 2. This act becomes effective October 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of June, 1997.

Became law on the date it was ratified.

S.B. 529

CHAPTER 151

AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWNS OF HOPE MILLS AND WEAVERVILLE.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area within the primary corporate limits of the annexing city."

Section 2. G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty-three percent (23%) of the area within the primary corporate limits of the annexing city."

Section 3. Section 1 of this act applies only to the Town of Hope Mills.**Section 4.** Section 2 of this act applies only to the Town of Weaverville.**Section 5.** This act is effective when it becomes law.

In the General Assembly read three times and ratified the 5th day of June, 1997.

Became law on the date it was ratified.

H.B. 410

CHAPTER 152

AN ACT ENACTING AND ENTERING INTO THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

*The General Assembly of North Carolina enacts:***Section 1.** Chapter 166A of the General Statutes is amended by adding a new Article to read:"ARTICLE 4."Emergency Management Assistance Compact."§ 166A-34. Title of Article; entering into Compact.

(a) This Article may be cited as the Emergency Management Assistance Compact.

(b) The Emergency Management Assistance Compact, hereinafter 'Compact', is hereby enacted into law and entered into by this State with all other states legally joining therein, in the form substantially as set forth in this Article. This Compact is made and entered into by and between the party states which enact this Compact. For the purposes of this Article, the term 'states' means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions and the term 'party states' means the participating member states which enact and enter into this Compact.

"§ 166A-35. Purposes and authorities.

(a) The purpose of this Compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(b) This Compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this Compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

"§ 166A-36. General implementation.

(a) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this Compact. Each party state further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to respond to emergencies effectively and promptly. This is because few, if any, individual states have all the resources that they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(b) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this Compact shall be understood.

(c) On behalf of the governor of each party state, the legally designated state official who is assigned responsibility for emergency management shall be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this Compact.

"§ 166A-37. Party state responsibilities.

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this Article. In formulating the plans, and in carrying them out, the party states, insofar as practicable, shall:

- (1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party state might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.
- (2) Review the party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

- (3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
- (4) Assist in warning communities adjacent to or crossing the state boundaries.
- (5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment services, and resources, both human and material.
- (6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.
- (7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this Compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

- (1) A description of the emergency service function for which assistance is needed, including fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.
- (2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.
- (3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the federal government, with free exchange of information, plans, and resource records relating to emergency capabilities.

"§ 166A-38. Limitations.

(a) Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this Compact in accordance with the terms hereof; provided that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

(b) Each party state shall afford to the emergency forces of any party state while operating within its state limits under the terms and conditions of this Compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are

afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state or states, whichever is longer.

"§ 166A-39. Licenses and permits.

Whenever any person holds a license, certificate, or other permit issued by any party state evidencing the meeting of qualifications for professional, mechanical, or other skills, and when assistance is requested by the receiving party state, the person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving skill to meet a declared emergency or disaster, subject to any limitations and conditions the governor of the requesting state may prescribe by executive order or otherwise.

"§ 166A-40. Liability.

Officers or employees of a party state rendering aid in another state pursuant to this Compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this Compact shall be liable for any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used in connection with an attempt to render aid. For the purposes of this Article, 'good faith' does not include willful misconduct, gross negligence, or recklessness.

"§ 166A-41. Supplementary agreements.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

"§ 166A-42. Compensation.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to this Compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

"§ 166A-43. Reimbursement.

Any party state rendering aid in another state pursuant to this Compact shall be reimbursed by the party state receiving the aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests; provided, that any aiding party state may assume in whole or in part the loss, damage, expense, or other cost, or may loan the equipment or donate the services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states.

"§ 166A-44. Evacuation.

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting the evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the party state from which the evacuees come and that party state shall assume the responsibility for the ultimate support of repatriation of the evacuees.

"§ 166A-45. Effective date.

(a) This Compact shall become operative immediately upon its enactment into law by any two states; thereafter, this Compact shall become effective as to any other state upon its enactment by the state.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. The action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this Compact and of any supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the federal government.

"§ 166A-46. Validity.

If any provision of this Compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the

constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

"§ 166A-47. Additional provisions.

Nothing in this Compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under section 1385 of Title 18, United States Code."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 11:25 a.m. on the 6th day of June, 1997.

H.B. 432

CHAPTER 153

AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM
HURRICANE FRAN WITH RESPECT TO THE MOBILIZATION OF
THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 127A of the General Statutes is amended by adding a new section to read:

"§ 127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member of the North Carolina National Guard during the member's period of active service.

(e) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article."

Section 2. G.S. 127A-105 reads as rewritten:

"§ 127A-105. Rations and pay on State service.

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87~~, G.S. 95-25.3(a)."

Section 3. G.S. 127A-107 reads as rewritten:

"§ 127A-107. Rate of pay for other service.

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. Such officers and enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such officer or enlisted member shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87~~, G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority."

Section 4. Chapter 127A of the General Statutes is amended by adding a new section to read:

"§ 127A-111. Civilian leave option.

(a) A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No member of the North Carolina National Guard shall be forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes."

Section 5. Chapter 127A of the General Statutes is amended by adding a new section to read:

"§ 127A-41.1. Stay of legal and court proceedings because of State military service.

At any stage of any legal proceeding in any court in which a person called into service of the State by the Governor is involved, either as plaintiff or defendant, during the period of service or within 60 days after the conclusion of the period of active service, all actions and proceedings:

- (1) May be stayed by the court on its own motion; or
- (2) Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of the military service."

Section 6. G.S. 127A-106 reads as rewritten:

"§ 127A-106. *Paid by the State.*

When the militia or any portion thereof shall be ordered by the Governor into State service, the ~~pay~~, pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor."

Section 7. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
 - e. Article 16 of Chapter 127A.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes."

Section 8. Sections 1 through 7 of this act become effective December 1, 1997. Section 8 of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of June, 1997.

Became law upon approval of the Governor at 11:26 a.m. on the 6th day of June, 1997.

S.B. 554

CHAPTER 154

AN ACT TO REMOVE THE SUNSET.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 424 of the 1995 Session Laws reads as rewritten:

"Sec. 3. This act becomes effective October 1, 1995, and applies to actions commenced on or after that ~~date, but before October 1, 1998, date~~ without regard to the date of death of the putative father. ~~This act expires on October 1, 1998.~~"

Section 2. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 11:35 a.m. on the 6th day of June, 1997.

S.B. 811

CHAPTER 155

AN ACT TO AUTHORIZE THE SOUTHEASTERN NORTH CAROLINA REGIONAL ECONOMIC DEVELOPMENT COMMISSION TO HIRE AND CONTRACT FOR PERSONNEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-8.3 is amended by adding a new subsection to read:

"(f) Within the limits of funds available, the Commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. With the approval of any unit of local government, the Commission may contract to use officers, employees, agents, and facilities of the unit of local government. The Commission may carry out the provisions of any contracts it may enter.

Within the limits of funds available, the Commission may lease, rent, purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 11:35 a.m. on the 6th day of June, 1997.

H.B. 53

CHAPTER 156

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE 82ND AIRBORNE DIVISION ASSOCIATION SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(9a) 82nd Airborne Division Association Member. -- Issuable to a member of the 82nd Airborne Division Association, Inc. The

plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 11:36 a.m. on the 6th day of June, 1997.

H.B. 477

CHAPTER 157

AN ACT TO AUTHORIZE THE STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS TO ADMINISTER COMPUTER-BASED EXAMINATIONS AND TO KEEP CERTAIN RECORDS CONFIDENTIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12(4) reads as rewritten:

"(4) To hold ~~written or~~ written, oral, and computer-based examinations of applicants for certificates of qualification at least once a year, or more often, as may be deemed necessary by the Board."

Section 2. Chapter 93 of the General Statutes is amended by adding a new section to read:

"§ 93-12.2. Board records are confidential.

Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a certificate holder's professional ethics and conduct, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges against a certificate holder or applicant, or any notice to a certificate holder or applicant of a hearing to be held by the Board is a public record, even though it may contain information collected and compiled as a result of a complaint, investigation, inquiry, or interview conducted by the Board. If any record, paper, or other document containing information collected and compiled by the Board is admitted into evidence in a hearing held by the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 11:36 a.m. on the 6th day of June, 1997.

H.B. 704

CHAPTER 158

AN ACT TO PROVIDE SPECIAL REGISTRATION LICENSE PLATES FOR CURRENT SHERIFFS AND CERTAIN RETIRED SHERIFFS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision in the appropriate alphabetical order to read:

"(22a1) Sheriff. -- Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word 'Sheriff' and the letter 'S' followed by a number that indicates the county the sheriff serves. A plate issued to a retired sheriff shall bear the phrase 'Sheriff, Retired', the letter 'S' followed by a number that indicates the county the sheriff served, and the letter 'X' indicating the sheriff's retired status."

Section 2. This act becomes effective December 1, 1997.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 11:37 a.m. on the 6th day of June, 1997.

H.B. 977

CHAPTER 159

AN ACT TO ALLOW PARENTS TO ELECT THE PARENTS WHO SERVE ON SCHOOL IMPROVEMENT TEAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-105.27 reads as rewritten:

"§ 115C-105.27. Development and approval of school improvement plans.

In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure

substantial parent participation. The strategies for improving student performance shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The strategies may include a decision to use State funds in accordance with G.S. 115C-105.25. The strategies may also include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. 115C-105.26.

Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans."

Section 2. This act becomes effective July 1, 1997, and applies beginning with the 1997-98 school year.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law upon approval of the Governor at 11:37 a.m. on the 6th day of June, 1997.

S.B. 524

CHAPTER 160

AN ACT TO ALLOW THE CITIES OF CONOVER AND SANFORD TO SERVE COMPLAINTS AND ORDERS BY PUBLICATION UPON OWNERS WHOSE IDENTITIES OR WHEREABOUTS ARE KNOWN AND THEY REFUSE TO ACCEPT SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-445(b) reads as rewritten:

"(b) (1) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

~~(2) This subsection applies only to municipalities that have a population in excess of 300,000 by the last federal census."~~

Section 2. This act applies only to the Cities of Conover and Sanford.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

H.B. 97

CHAPTER 161

AN ACT TO EXEMPT THE ADMINISTRATION OF THE GASTONIA POLICEMEN'S SUPPLEMENTAL RETIREMENT FUND AND THE GASTONIA FIREMEN'S SUPPLEMENTAL RETIREMENT FUND FROM THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. Article VIII of the Charter of the City of Gastonia, being Chapter 557 of the 1991 Session Laws, reads as rewritten:

"ARTICLE VIII. RETIREMENT.

"Sec. 8.1. **Gastonia Firemen's Supplemental Retirement Fund.** The Gastonia Firemen's Supplemental Retirement Fund shall continue as

authorized by Chapter 537, Session Laws of 1949, as amended by Chapter 111, Session Laws of 1957; Chapter 51, Session Laws of 1975; and Chapter 1016, Session Laws of 1983 (Reg. Sess. 1984). The Gastonia Firemen's Supplemental Retirement Fund is not subject to Article 3 of Chapter 159 of the General Statutes.

"Sec. 8.2. Gastonia Policemen's Supplemental Retirement Fund. The Gastonia Policemen's Supplemental Retirement Fund shall continue as authorized by Chapter 946, Session Laws of 1955, as amended by Chapter 112, Session Laws of 1957; Chapter 301, Session Laws of 1959; Chapter 198, Session Laws of 1965; Chapter 979, Session Laws of 1965; and Chapter 809, Session Laws of 1983. The Gastonia Policemen's Supplemental Retirement Fund is not subject to Article 3 of Chapter 159 of the General Statutes."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

H.B. 283

CHAPTER 162

AN ACT TO ALLOW PERQUIMANS COUNTY TO ACQUIRE
PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. Acquisition and improvement of school property in certain counties.

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local

board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

H.B. 411

CHAPTER 163

AN ACT TO REVISE THE LAW RELATING TO THE GAME COMMISSION OF CURRITUCK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 6 of Chapter 622 of the 1981 Session Laws, reads as rewritten:

"Sec. 8. To obtain a license for either a stationary bush blind or a floating bush blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing:

(a) For a bush blind, \$15.00; and

(b) For a float blind, \$20.00.

(1) Twenty-five dollars (\$25.00) if the applicant is a resident of North Carolina; or

(2) Two hundred fifty dollars (\$250.00) if the applicant is not a resident of North Carolina.

Of the amount remitted, the clerk to the Game Commission shall retain one dollar (\$1.00) as an issuance fee for each license issued. In addition to the application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars (\$10.00). Applicants shall submit proof of North Carolina residency along with each application.

Applicants who are not residents of North Carolina but who were the holders of licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina residents for all subsequent renewals of that application. However, this exemption terminates if the blind license is not renewed during any subsequent annual renewal period and is not transferable to any different blind location.

Float blinds when licensed shall bear the license number or tag, and the same shall be displayed in a prominent or conspicuous place upon the blind."

Section 2. Subsection (b) of Section 10 of Chapter 1436 of the 1957 Session Laws, as amended by Section 7 of Chapter 622 of the 1981 Session Laws and Section 4 of Chapter 764 of the 1983 Session Laws, reads as rewritten:

"(b) Application must be filed on or before August 1 of each year to insure timely consideration. To obtain a license for a point blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing twenty-five dollars (\$25.00). ~~Of the amount remitted, the clerk to the Game Commission shall retain two dollars (\$2.00) as an issuance fee for each license issued.~~ In addition to the application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars (\$10.00)."

Section 3. Section 18 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 9 of Chapter 622 of the 1981 Session Laws, reads as rewritten:

"Sec. 18. The Game Commission of Currituck County is empowered to pay the necessary fees of attorneys, surveyors, and accountants; the costs of printing license forms for hunting blind licenses to be furnished to the clerk to the Game Commission; and other necessary expenses of carrying out the duties imposed by this act. Each member shall be paid a per diem of ten dollars (\$10.00) and travel expenses of fifteen cents (15¢) per mile while engaged in official business of the Game Commission. the Chairman of the Game Commission shall be paid one thousand dollars (\$1,000) per year in addition to per diem and travel for the fulfillment of his duties as chairman, in such installments as the Commission may direct. Each Game Commission member shall be paid five hundred dollars (\$500.00) per year in addition to per diem and travel in such installments as the Game Commission may direct. The clerk to the Game Commission shall receive an annual salary of five hundred dollars (\$500.00) for the performance of his duties for the Game Commission in addition to his fees for issuing licenses.

~~The Game Commission may accumulate an operating reserve of funds to carry out the necessary duties imposed by this act in an amount deemed necessary by the Game Commission, but not to exceed five thousand dollars (\$5,000). At the end of each fiscal year any funds held by the Game Commission in excess of the operating reserve must be paid to the North Carolina Wildlife Commission for deposit in the Wildlife Resources Fund.~~

In addition, the Game Commission may disburse excess funds generated from fees to an organization established as a nonprofit corporation under North Carolina law for the purpose of conservation, habitat enhancement, and waterfowl protection in Currituck County. The board of directors of this corporation shall be appointed by the Currituck County Board of Commissioners and shall include a representative designated by the Wildlife Resources Commission as a nonvoting member.

Prior to the beginning of the Game Commission's fiscal year it shall file a copy of its budget for that year with the North Carolina Wildlife Resources Commission. Within 30 days following receipt of the audit report made after the close of a fiscal year, the Game Commission shall file a copy of the audit report with the Wildlife Commission."

Section 4. Section 24 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 5 of Chapter 808 of the 1989 Session Laws, reads as rewritten:

"Sec. 24. (a) The Unless modified by the Game Commission pursuant to subsection (d) of this section, in all areas of Currituck County lying east and north of the line described in subsection (c) of this section, the starting time for waterfowl hunting each day, and the quitting time for waterfowl hunting each day prior to November 1 and after January 31 of the hunting season, shall be as set by the North Carolina Wildlife Resources Commission, or as required by the statewide game law. The quitting time for waterfowl hunting each day after from November 1 through January 31 of the hunting season shall be 4:20 p.m. Eastern Standard Time.

(b) Unless modified by the Game Commission pursuant to subsection (d) of this section, in all areas of Currituck County lying west of the line described in subsection (c) of this section, the starting time for waterfowl hunting each day, and the quitting time for waterfowl hunting each day, shall be as set by the North Carolina Wildlife Resources Commission, or as required by the statewide game law.

(c) The line of demarcation between the waterfowl hunting regions referred to in subsections (a) and (b) of this section is as follows:

Beginning at a point located on the boundary line between the State of North Carolina and the Commonwealth of Virginia and which point marks the center of the Atlantic Intracoastal Waterway (AICW) as established by the United States Army Corps of Engineers and thence following the center of the AICW channel in a southerly direction to the point which marks the intersection with the center of the ferry channel for the Currituck-Knotts Island Ferry; thence running in a southeasterly direction to the northeastern point of Churches Island at a point where the right-of-way of NCSR 1142 (the road from Coinjock to Churches Island) would terminate if extended in a northerly direction to the high water mark of the sound; thence following the center line of NCSR 1142 and the northerly extension thereof in a southerly and westerly direction through Churches Island and continuing to a point where the right-of-way intersects the center of U.S. Highway 158 near the bridge crossing the AICW at Coinjock; thence following the center line of U.S. Highway 158 in a southerly direction to the center of the Currituck Sound and the line marking the boundary between Dare County and Currituck County.

(d) Subject to the approval of the Currituck County Board of Commissioners, the Game Commission may modify the times for waterfowl hunting set forth in this section upon specific findings, after duly advertised public hearing, that the modifications will benefit the waterfowl flyway and habitat within Currituck County and will promote safety and conservation of resources. However, the Game Commission may not modify the times for waterfowl hunting to allow hunting during times when waterfowl hunting is otherwise prohibited by the Wildlife Resources Commission in other areas of the State."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

H.B. 831

CHAPTER 164

AN ACT REQUIRING THE CONSENT OF YANCEY COUNTY BEFORE LAND MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Caldwell, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Davie, Duplin, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Montgomery, New Hanover, Onslow, Pender, Person, Robeson, Rockingham, Rowan, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, ~~and Wilkes~~ Wilkes, and Yancey counties only. This section does not apply as to any:

(1) Condemnation; or

(2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

H.B. 879

CHAPTER 165

AN ACT TO ALLOW CERTAIN DECISIONS OF THE DURHAM COUNTY BOARD OF ADJUSTMENT TO BE MADE BY THREE-FIFTHS VOTE RATHER THAN FOUR-FIFTHS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-345(e) reads as rewritten:

"(e) The board of adjustment, by a vote of ~~four-fifths~~ three-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to

the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Section 2. This act applies to Durham-County only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

H.B. 881

CHAPTER 166

AN ACT TO AMEND THE DURHAM CITY CHARTER TO PERMIT THE APPOINTMENT OF A BOARD OF ADJUSTMENT WITH MORE THAN FIVE MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Section 93 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is rewritten to read:

"Sec. 93. Board of adjustment.

- (1) The city council is authorized to provide for the appointment and compensation of a board of adjustment consisting of five or more members (exclusive of additional members appointed to represent residents of the extraterritorial area pursuant to G.S. 160A-362) each to be appointed for three years.
- (2) The concurring vote of three-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of the city zoning ordinance, or to decide in favor of the applicant any matter upon which it is required to pass under the city zoning ordinance, or to grant a variance from the provisions of the city zoning ordinance."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law on the date it was ratified.

S.B. 814

CHAPTER 167

AN ACT TO PROVIDE FOR IN-STAND SALES OF ALCOHOLIC BEVERAGES IN CERTAIN STADIUMS, BALLPARKS, AND SIMILAR PUBLIC PLACES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1009. *In-stand sales.*

Nothing in this Chapter shall be construed to prohibit a retail permittee from selling for consumption, malt beverages in the seating areas of stadiums, ballparks, and other similar public places with a seating capacity of 60,000 or more during professional sporting events, in municipalities

with a population greater than 450,000, according to the most recent estimate of population made by the Office of State Budget and Management, provided that:

- (1) The seating areas are designated as part of the retail permittee's licensed premises;
- (2) The retail permittee has notified the Commission, in writing, of its intent to sell malt beverages in the seating areas at sporting events;
- (3) Service of food and nonalcoholic beverages is available in the seating areas;
- (4) The retail permittee has certified to the Commission that it has trained its employees:
 - a. To identify underage persons and intoxicated persons; and
 - b. To refuse to sell malt beverages to those persons as required by G.S. 18B-305; and
- (5) The employees do not verbally shout or hawk the sale of malt beverages."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 1997.

Became law on 10th after presentation to the Governor.

S.B. 513

CHAPTER 168

AN ACT TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF OAKBORO IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. For the 1986-87 through 1996-97 fiscal years, the Town of Oakboro, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Oakboro for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Oakboro for those fiscal years are in all respects validated and confirmed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law on the date it was ratified.

H.B. 804

CHAPTER 169

AN ACT TO GIVE LINCOLN COUNTY AUTHORITY TO BUILD AND IMPROVE ROADS WITHIN LINCOLN COUNTY THAT ARE NOT PART OF THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. A county may build, construct, improve, reconstruct, widen, pave, install curbs and gutters, and otherwise build and improve

roads and streets that are located in the county and outside a city and that are not part of the State highway system and may advertise, accept bids, enter into contracts, and undertake any other action reasonably necessary to carry out the powers granted by this act. A county shall make special assessments against benefitted property to pay for any work in accordance with the procedures set forth in this act. The authority granted by this act shall include the authority to make any improvements necessary to bring roads up to State standards so that they may be accepted into the State highway system.

Section 2. Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council. A county may treat as a unit and consider as one street two or more connecting State-maintained subdivision or residential streets in a petition filed under this subsection calling for the improvement of subdivision or residential streets subject to property owner sharing in the cost of improvement under policies of the Department of Transportation.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

Section 3. This act is intended to provide a means of assisting in financing improvements to streets and roads that are not on the State highway system. By financing improvements under this act, a county does not acquire or assume any responsibility for the streets or roads involved, and a county has no liability arising from the construction of an improvement to a road or the maintenance of the street or road.

Section 4. A county may make assessments against benefitted property to recoup all or part of the costs of the work authorized in this act on the basis of:

- (1) The frontage abutting on the project, at an equal rate per foot of frontage; or

- (2) The street frontage of the lots served, or subject to being served, by the project, at an equal rate per foot of frontage; or
- (3) The area of land served, or subject to being served, by the project, at an equal rate per unit of area; or
- (4) The valuation of land served, or subject to being served, by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
- (5) A combination of two or more of these bases. For each project, the Board of Commissioners shall endeavor to establish an assessment method from among the bases set out in this section that will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The Board's decision as to the method of assessment is final and not subject to further review and challenge.

Section 5. The Board of Commissioners shall develop guidelines for determining which projects, authorized by this act, to pursue and in what order. The Board of Commissioners may consider, among other reasonable factors:

- (1) The chronological order in which it receives petitions as provided for in this act;
- (2) The number of citizens to be served per mile by the proposed project;
- (3) The severity of the need to be alleviated by the proposed project relative to other similar situations in the county; or
- (4) Funds advanced, if any, by the citizens to be served by the proposed project to participate in paying for the project.

Section 6. Except as otherwise provided in this act, a county shall follow the procedures set forth in Article 9 of Chapter 153A of the General Statutes in making, giving notice of, providing for payment of, and enforcing assessments for projects authorized in this act.

Section 7. This act applies to Lincoln County only.

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law on the date it was ratified.

S.B. 698

CHAPTER 170

AN ACT ALLOWING WAYNE COUNTY TO CONVEY CERTAIN REAL PROPERTY TO THE NAHUNTA VOLUNTEER FIRE DEPARTMENT BY PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, the County of Wayne may convey to the Nahunta Volunteer Fire Department, Inc., a nonprofit corporation, by private sale with or without consideration, a tract consisting of 2.88 acres and a right-of-way located in Buck Swamp Township, Wayne County, and

described in the deed recorded in Book 1555, Page 1 of the Wayne County Registry, for use as a parking area and for use by the Nahunta Extension Homemakers Club, said property being more particularly described as follows:

"All that tract of land containing 2.88 acres more or less, being part of the property recorded in Deed Book 274, page 158 and Deed Book 410, page 407, being located in Buck Swamp Township, Wayne County, NC and described by metes and bounds as follows:

Commencing at an iron stake found on the eastern right-of-way of NC Highway No. 581, the southwestern corner of Ed Radford Auto Auction, Inc., Deed Book 1348, page 470, said stake being point 'A', having NC Grid Coordinates Y=640,662.6989 and X-2,278,646.8410 and being located from NC Geodetic station Monument entitled 'Nahunta', having grid coordinates Y=640,993.6524 and X-2,278,588.5365, a magnetic bearing S. 04-54-21 E. and a horizontal distance 336.09 feet; and runs thence, leaving said road right-of-way, and with the line of Ed Radford Auto Auction, Inc., Deed Book 1348, Page 470, N. 80-30-00 E. 195.36 feet to an iron stake found; thence continued with said Radford line N. 08-38-23 W. 92.33 feet to a p.k. nail found; thence continued with said Radford line, N. 08-38-23 W. 85.86 feet to an iron stake found; thence continued with said Radford line N. 08-38.23 W 33.11 feet to an iron stake found; thence continued with said Radford line N. 80-36-52 E. 181.51 feet to an iron stake found; thence continued with said Radford line N. 80-36-52 E. 22.66 feet to an iron stake found on the western edge of a 30 foot right-of-way, Deed Book 1354, Page 186, said stake being located S. 09-30-02 E. 139.60 feet from a point on the southern right-of-way of NCSR No. 1336; thence with the western edge of said 30 foot right-of-way, S. 09-30-02 E. 33.66 feet to an iron stake found at the end of said 30 foot right-of-way, the point of beginning; thence from said beginning and along the southern end of said 30 foot right-of-way, Deed Book 1354, Page 186, N. 80-45-48 E. 30.00 feet to an iron stake found on the eastern edge of said 30 foot right-of-way; thence leaving said 30 foot right-of-way and with the line of the Trustees of the Nahunta Home Extension Club, Deed Book 1354, Page 186, N. 80-45-48 E. 24.01 feet to a point in said line; thence continued with said line and with an existing ditch, N. 80-45-48 E. 64.18 feet to a point in said line and in said ditch; thence continued with said line and said ditch, N. 81-03-19 E. 76.97 feet to an iron stake; thence continued with said Nahunta Home Extension Club Line, N. 71-56-52E. 109.32 feet to an iron stake; thence continued N. 71-56-52 E. 30.00 feet to a point in Brooks Branch; thence with said branch as it meanders S. 29-23-12E. 433.29 feet to an iron stake found (axle) in said branch; thence leaving said branch and with the line of Zeb Whaley Heirs, S. 83-13-43 W. 191.51 feet to an iron stake set; thence continued with said Whaley Line, S. 83-13-43 W. 200.00 feet to an iron stake set; thence leaving said Whaley Line, N. 07-27-40 W. 278.24 feet to an iron stake set; thence N. 65-18-27 W. 119.87 feet to an iron stake set; thence N. 09-30-02 W. 23.96 feet to the point of beginning.

THERE IS ALSO CONVEYED all of the Grantor's right title and interest in and to the perpetual easement for ingress, egress and regress described in Deed Book 1354, Page 186 of the Wayne County Registry."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law on the date it was ratified.

S.B. 936

CHAPTER 171

AN ACT TO PROVIDE PRIORITY IN EMPLOYMENT ASSISTANCE
FOR UNITED STATES ARMED FORCES VETERANS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 165 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Priority in Employment Assistance for United States Armed Forces Veterans.

"§ 165-44.1. Purpose.

The General Assembly finds and declares that veterans in North Carolina represent a strong, productive part of the workforce of this State and are disadvantaged in their pursuit of civilian employment through their delayed entry into the civilian labor market and that it is only proper and in the public interest and public welfare that veterans be provided priority in programs of employment and job training assistance.

"§ 165-44.2. Veteran defined.

For the purposes of this Article, 'veteran' means a person who served on active duty (other than for training) in any component of the United States Armed Forces for a period of 180 days or more, unless released earlier because of service-connected disability, and who was discharged or released from the armed forces under honorable conditions.

"§ 165-44.3. Priority defined.

For the purposes of this Article, 'priority' for veterans means that eligible veterans who register or otherwise apply for services shall be extended the opportunity to participate in or otherwise receive the services of the covered providers before the providers extend the opportunity or services to other registered applicants.

"§ 165-44.4. Coverage defined.

This Article shall apply to any State agency, department and institution, any county, city, or other political subdivision of the State, any board or commission, and any other public or private recipient which:

- (1) Receives federal job training funds provided to the State or job training funds appropriated by the General Assembly; and
- (2) Provides employment and job training assistance programs and services, including but not limited to employability assessments, support services referrals, and vocational and educational counseling.

"§ 165-44.5. Priority employment assistance directed.

All covered service providers, as specified in G.S. 165-44.4, shall establish procedures to provide veterans with priority, not inconsistent with

existing federal or State law, to participate in employment and job training assistance programs.

"§ 165-44.6. Implementation and performance measures.

The North Carolina Commission on Workforce Preparedness shall:

- (1) Issue implementing directives that shall apply to all covered service providers as specified in G.S. 165-44.4, and revise those directives as necessary to accomplish the purpose of this Article.
- (2) Develop measures of service for veterans that will serve as indicators of compliance with the provisions of this Article by all covered service providers.
- (3) Annually publish and submit to the Joint Legislative Commission on Governmental Operations, beginning not later than October 1, 1998, a report detailing covered providers' compliance with the provisions of this Article."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 1997.

Became law upon approval of the Governor at 3:30 p.m. on the 12th day of June, 1997.

S.B. 626

CHAPTER 172

AN ACT TO ESTABLISH IN THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES THE OFFICE OF WOMEN'S HEALTH.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 5 of Chapter 30 of the General Statutes reads as rewritten:

"Maternal and Child ~~Health~~. Health and Women's Health."

Section 2. Article 5 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 8. Office of Women's Health."

"§ 130A-131.19. Office of Women's Health established."

(a) There is established in the Department the Office of Women's Health. The purpose of the office is to expand the State's public health concerns and focus to include a comprehensive outlook on the overall health status of women. The primary goals of the Office shall be the prevention of disease and improvement in the quality of life for women over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include but not be limited to:

- (1) Developing a strategic plan to improve public services and programs targeting women;
- (2) Conducting policy analyses on specific issues related to women's health;
- (3) Facilitating communication among the Department's programs and between the Department and external women's health groups and community-based organizations;

(4) Building public health awareness and capacity regarding women's health issues by providing a series of services including evaluation, recommendation, technical assistance, and training; and

(5) Developing initiatives for modification or expansion of women-oriented services with the intent of establishing meaningful public/private partnerships in the future.

(b) The Office shall study the feasibility of establishing initiatives for:

(1) Early intervention services for women infected with HIV; and

(2) Outreach, treatment, and follow-up services to women at high risk for contracting sexually transmitted diseases.

In conducting the study the Department shall take into consideration related services already in place in the Department and at the local level."

Section 3. The Department of Environment, Health, and Natural Resources shall report to the 1997 General Assembly, 1998 Regular Session, upon its convening, on the implementation of the Office of Women's Health. The Department's report shall include recommendations for legislation necessary to fully implement or enhance the effectiveness of the Office of Women's Health.

Section 4. The Department of Environment, Health, and Natural Resources shall implement this act using funds available to it for the 1997-98 and 1998-99 fiscal years.

Section 5. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 4th day of June, 1997.

Became law upon approval of the Governor at 3:31 p.m. on the 12th day of June, 1997.

H.B. 999

CHAPTER 173

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties~~; duties; compliance inspections.

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts~~; districts.

b. To approve application for watershed ~~plans~~; and plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this

Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of Environment, Health, and Natural Resources may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective 1 December 1997 and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 4th day of June, 1997.

Became law upon approval of the Governor at 3:32 p.m. on the 12th day of June, 1997.

S.B. 891

CHAPTER 174

AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL GOVERNMENT CONTRACTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars (\$20,000)~~, thirty thousand dollars (\$30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State,

unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official the authority to award contracts, reject bids, readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

Section 2. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of

the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals ~~in an estimated amount of less than one hundred thousand dollars (\$100,000)~~ for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed ~~if the invitation to bid so specifies and, in any event, and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."~~

Section 3. G.S. 143-129(f) reads as rewritten:

"(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment by hospitals when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration; consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve purchases made under this exception prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the

provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for 'over-the-counter' resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a ~~hospital~~ hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this exception. These records are subject to public inspection."

Section 4. G.S. 143-129 is amended by adding a new subsection to read:

"(g) When the governing board of any municipality, county, or other subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

- (1) The United States of America or any federal agency;
- (2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

Section 5. G.S. 143-131 reads as rewritten:

"§ 143-131. *When counties, cities, towns and other subdivisions may let contracts on informal bids.*

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars (\$5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible

bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection ~~at any time, until the contract has been awarded.~~"

Section 6. G.S. 160A-266 reads as rewritten:

"§ 160A-266. *Methods of sale; limitation.*

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

- (1) Private negotiation and sale;
- (2) Advertisement for sealed bids;
- (3) Negotiated offer, advertisement, and upset bid;
- (4) Public auction; or
- (5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) for any one item or group of similar items. Real property ~~property, of any value, and personal property valued at ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five hundred dollars (\$500.00)~~ five thousand dollars (\$5,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either

public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five hundred dollars (\$500.00)~~ five thousand dollars (\$5,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall, ~~on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year.~~ The written report shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or ~~exchange since the last such report was submitted.~~ exchange."

Section 7. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and equipment.

Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, municipalities, counties, and other political subdivisions of the State may include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as 'trade-in' specified personal property owned by the municipality, county, or other political subdivision, and the awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in this Article."

Section 8. This act raises the threshold amount in G.S. 143-129 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict.

Section 9. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 3:33 p.m. on the 12th day of June, 1997.

H.B. 615

CHAPTER 175

AN ACT TO CHANGE THE METHOD OF APPOINTING THE PUBLIC DEFENDER IN DISTRICT 16B.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-466(e) reads as rewritten:

"(e) In Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than three names nominated

by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of Superior Court District ~~16B other than the senior resident superior court judge.~~ 16B."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 3:34 p.m. on the 12th day of June, 1997.

H.B. 897

CHAPTER 176

AN ACT TO AMEND THE REQUIREMENTS PERTAINING TO THE NUMBER OF MEMBERS OF ADVISORY COMMITTEES OF NURSING HOMES AND REST HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-128(b)(1) reads as rewritten:

- "(b) (1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of ~~three~~ three, and may have up to five additional members per committee at the discretion of the county commissioners."

Section 2. G.S. 131D-31(b) reads as rewritten:

- "(b) Establishment and Appointment of Committees. --

- (1) A community advisory committee shall be established in each county that has at least one licensed adult care ~~home home~~, shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county that has one, two, or three adult care homes with 10 or more beds, the committee shall have five members.
- (2) In a county with four or more adult care homes with 10 or more beds, the committee shall have one additional member for each adult care home with 10 or more beds in excess of three, ~~up to~~ and may have up to five additional members at the discretion of the county commissioners, not to exceed a maximum of 20 25 members. In each county with four or more adult care homes with 10 or more beds, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each adult care home in the county. Each member must serve on at least one subcommittee.

- (3) In counties with no adult care homes with 10 or more beds, the committee shall have five members. Regardless of how many members a particular community advisory committee is required to have, at least one member of each committee shall be a person involved in the area of mental retardation.
- (4) The boards of county commissioners are encouraged to appoint the Adult Care Home Community Advisory Committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) shall be chosen from among persons nominated by a majority of the chief administrators of adult care homes in the county. If the adult care home administrators fail to make a nomination within 45 days after written notification has been sent to them requesting a nomination, these appointments may be made without nominations. If the county commissioners fail to appoint members to a committee by July 1, 1983, the appointments shall be made by the Assistant Secretary for Aging, Department of Human Resources, no sooner than 45 days after nominations have been requested from the adult care home administrators, but no later than October 1, 1983. In making appointments, the Assistant Secretary for Aging shall follow the same appointment process as that specified for the County Commissioners."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 3:34 p.m. on the 12th day of June, 1997.

H.B. 948

CHAPTER 177

AN ACT TO AUTHORIZE THE BOARD OF PHARMACY TO ESTABLISH A RECOVERY AND REHABILITATION PROGRAM FOR PHARMACISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.6 reads as rewritten:

"§ 90-85.6. *Board of Pharmacy; creation; membership; qualification of members.*

(a) Creation. -- The responsibility for enforcing the provisions of this Article and the laws pertaining to the distribution and use of drugs is vested in the Board. The Board shall adopt reasonable rules for the performance of its duties. The Board shall have all of the duties, powers and authorities specifically granted by and necessary for the enforcement of this Article, as well as any other duties, powers and authorities that may be granted from time to time by other appropriate statutes. The Board may establish a program for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol, and the Board may use money collected as fees to fund such a program.

(b) Membership. -- The Board shall consist of six members, one of whom shall be a representative of the public, and the remainder of whom shall be pharmacists.

(c) Qualifications. -- The public member of the Board shall not be a health care provider or the spouse of a health care provider. He shall not be enrolled in a program to prepare him to be a health care provider. The public member of the Board shall be a resident of this State at the time of his appointment and while serving as a Board member. The pharmacist members of the Board shall be residents of this State at the time of their appointment and while serving as Board members."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 3:38 p.m. on the 12th day of June, 1997.

H.B. 966

CHAPTER 178**AN ACT TO PROVIDE FOR OPTIONS IN FLAG AND LIGHT COLORS FOR EXTENDED TRUCKLOADS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-117 reads as rewritten:

"§ 20-117. *Flag or light at end of load.*

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 3:38 p.m. on the 12th day of June, 1997.

H.B. 1024

CHAPTER 179**AN ACT TO ALLOW FOR THE LICENSING OF CERTAIN SUBSIDIARIES OF INSURERS OWNED OR CONTROLLED BY FOREIGN GOVERNMENTS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-16-20 reads as rewritten:

"§ 58-16-20. *Company owned or controlled by alien foreign government prohibited from doing business.*

(a) Any insurance company or other insurance entity which that is financially owned or financially controlled by any alien or foreign

government outside the continental limits of the United States or the territories of the United States is ~~hereby~~ prohibited from doing any kind of insurance business in the State of North Carolina. For the purposes of this section, ~~the term 'alien or foreign'~~ 'foreign government' is defined to mean any foreign government or any state, province, municipality, or political subdivision of any foreign government, and shall not be construed to apply to any insurance company organized under the laws of a foreign nation ~~which that is financially owned or financially controlled by the private citizens or private business interest of such that foreign nation.~~

(b) The Commissioner ~~is hereby forbidden to grant a~~ shall not license to any insurance company or other insurance entity ~~which that is financially owned or financially controlled by any alien or foreign government outside the continental limits of the United States or the territories of the United States, or to nor shall the Commissioner authorize any such company or entity to transact any kind of insurance business in the State of North Carolina.~~

(c) Any insurance company or other insurance entity ~~which that is financially owned or financially controlled by any alien or foreign government outside the continental limits of the United States or the territories of the United States, or any representative or agent of any such company or entity which that violates the provisions of this section, shall be~~ is guilty of a Class 3 misdemeanor.

(d) This section does not apply to the operating subsidiary of any insurance company or other insurance entity, where the company or entity is owned or controlled by any foreign government outside the continental limits of the United States or the territories of the United States, as long as the operating subsidiary is domesticated in and licensed by another state of the United States as an insurer or reinsurer and as a separate subsidiary."

Section 2. This act becomes effective October 1, 1997, and applies to acts committed and applications for licensure submitted on or after that date.

In the General Assembly read three times and ratified this the 2nd day of June, 1997.

Became law upon approval of the Governor at 3:39 p.m. on the 12th day of June, 1997.

H.B. 1050

CHAPTER 180

AN ACT TO ALLOW LAW ENFORCEMENT AGENCIES TO DONATE UNCLAIMED BICYCLES TO CHARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-12 reads as rewritten:

"§ 15-12. Publication of notice of unclaimed property; advertisement and sale or donation of unclaimed bicycles.

(a) Unless otherwise provided herein, whenever such articles in the possession of any sheriff or police department have remained unclaimed by the person who may be entitled thereto for a period of 180 days after such seizure, confiscation, or receipt thereof in any other manner, by such sheriff or police department, the said sheriff or police department in whose

possession said articles are may cause to be published one time in some newspaper published in said county a notice to the effect that such articles are in the custody of such officer or department, and requiring all persons who may have or claim any interest therein to make and establish such claim or interest not later than 30 days from the date of the publication of such notice or in default thereof, such articles will be sold and disposed of. Such notice shall contain a brief description of the said articles and such other information as the said officer or department may consider necessary or advisable to reasonably inform the public as to the kind and nature of the article about which the notice relates.

(b) ~~Provided, however,~~ Notwithstanding subsection (a) of this section or Article 12 of Chapter 160A of the General Statutes, when bicycles which are in the possession of any sheriff or police department, as provided for in this Article, have remained unclaimed by the person who may be entitled thereto for a period of ~~30~~ 60 days after such seizure, confiscation or receipt thereof, the said sheriff or police department who has possession of any such bicycle may proceed to advertise and sell such bicycles as provided by this ~~Article~~. Article, or may donate such bicycles to a charitable organization exempt under section 501(c)(3) of the Internal Revenue Code. If the bicycles are to be donated, the notice shall state that as the intended disposition if they are not claimed."

Section 2. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are hereby repealed:

- Chapter 650 of the 1993 Session Laws;
- Chapter 106 of the 1995 Session Laws;
- Chapter 569 of the 1995 Session Laws;
- Chapter 614 of the 1995 Session Laws;
- Chapter 618 of the 1995 Session Laws.

Section 3. Any law, public or local, in conflict with this act is repealed.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd of June, 1997.

Became law upon approval of the Governor at 3:40 p.m. on the 12th day of June, 1997.

H.B. 134

CHAPTER 181

AN ACT TO ENACT THE REVISED ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 8.

"Investment Securities."PART 1."SHORT TITLE AND GENERAL MATTERS."§ 25-8-101. Short title.

This Article may be cited as Uniform Commercial Code-- Investment Securities.

"§ 25-8-102. Definitions.(a) In this Article:

- (1) 'Adverse claim' means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- (2) 'Bearer form', as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.
- (3) 'Broker' means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
- (4) 'Certificated security' means a security that is represented by a certificate.
- (5) 'Clearing corporation' means:
 - (i) A person that is registered as a 'clearing agency' under the federal securities laws;
 - (ii) A federal reserve bank; or
 - (iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.
- (6) 'Communicate' means to:
 - (i) Send a signed writing; or
 - (ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.
- (7) 'Entitlement holder' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of G.S. 25-8-501(b)(2) or (3), that person is the entitlement holder.
- (8) 'Entitlement order' means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- (9) 'Financial asset', except as otherwise provided in G.S. 25-8-103, means:
 - (i) A security;

- (ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
- (iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

- (10) 'Good faith', for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (11) 'Indorsement' means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.
- (12) 'Instruction' means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.
- (13) 'Registered form', as applied to a certificated security, means a form in which:
 - (i) The security certificate specifies a person entitled to the security; and
 - (ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.
- (14) 'Securities intermediary' means:
 - (i) A clearing corporation; or
 - (ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.
- (15) 'Security', except as otherwise provided in G.S. 25-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:
 - (i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
 - (ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(16) 'Security certificate' means a certificate representing a security.

(17) 'Security entitlement' means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(18) 'Uncertificated security' means a security that is not represented by a certificate.

(b) Other definitions applying to this Article and the sections in which they appear are:

'Appropriate person'

G.S. 25-8-107.

'Control'

G.S. 25-8-106.

'Delivery'

G.S. 25-8-301.

'Investment company security'

G.S. 25-8-103.

'Issuer'

G.S. 25-8-201.

'Overissue'

G.S. 25-8-210.

'Protected purchaser'

G.S. 25-8-303.

'Securities account'

G.S. 25-8-501.

(c) In addition, Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

(d) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

"§ 25-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share of similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An 'investment company security' is a security. 'Investment company security' means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this Article and not by Article 3 of this Chapter, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in G.S. 25-9-115, is not a security or financial asset.

"§ 25-8-104. Acquisition of security or financial asset or interest therein.

(a) A person acquires a security or an interest therein, under this Article, if:

(1) The person is a purchaser to whom a security is delivered pursuant to G.S. 25-8-301; or

(2) The person acquires a security entitlement to the security pursuant to G.S. 25-8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in G.S. 25-8-503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section.

"§ 25-8-105. Notice of adverse claim.

(a) A person has notice of an adverse claim if:

(1) The person knows of the adverse claim;

(2) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) One year after a date set for presentment or surrender for redemption or exchange; or

- (2) Six months after a date set for payment of money against presentation or surrender of the certificate if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

- (1) Whether in bearer or registered form, has been indorsed 'for collection' or 'for surrender' or for some other purpose not involving transfer; or
- (2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Article 9 of this Chapter is not notice of an adverse claim to a financial asset.

"§ 25-8-106. Control.

(a) A purchaser has 'control' of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has 'control' of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

- (1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or
- (2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has 'control' of an uncertificated security if:

- (1) The uncertificated security is delivered to the purchaser; or
- (2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has 'control' of a security entitlement if:

- (1) The purchaser becomes the entitlement holder; or
- (2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subdivision (c)(2) or (d)(2) of this section has control even if the registered owner in the case of subdivision (c)(2) of this section or the entitlement holder in the case of subdivision (d)(2) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (c)(2) or (d)(2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to

another party unless requested to do so by the registered owner or entitlement holder.

"§ 25-8-107. Whether indorsement, instruction, or entitlement order is effective.

(a) 'Appropriate person' means:

- (1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;
- (2) With respect to an instruction, the registered owner of an uncertificated security;
- (3) With respect to an entitlement order, the entitlement holder;
- (4) If the person designated in subdivision (1), (2), or (3) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or
- (5) If the person designated in subdivision (1), (2), or (3) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

- (1) It is made by the appropriate person;
- (2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under G.S. 25-8-106(c)(2) or (d)(2); or
- (3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

- (1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
- (2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

"§ 25-8-108. Warranties in direct holding.

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

- (1) The certificate is genuine and has not been materially altered;
- (2) The transferor or indorser does not know of any fact that might impair the validity of the security;
- (3) There is no adverse claim to the security;
- (4) The transfer does not violate any restriction on transfer;
- (5) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
- (6) The transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

- (1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
- (2) The security is valid;
- (3) There is no adverse claim to the security; and
- (4) At the time the instruction is presented to the issuer:
 - (i) The purchaser will be entitled to the registration of transfer;
 - (ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
 - (iii) The transfer will not violate any restriction on transfer; and
 - (iv) The requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

- (1) The uncertificated security is valid;
- (2) There is no adverse claim to the security;
- (3) The transfer does not violate any restriction on transfer; and
- (4) The transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

- (1) There is no adverse claim to the security; and
- (2) The indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

- (1) The instruction is effective; and
- (2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only

that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

"§ 25-8-109. Warranties in indirect holding.

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in G.S. 25-8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in G.S. 25-8-108(a) or (b).

"§ 25-8-110. Applicability; choice of law.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

- (5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

- (1) Acquisition of a security entitlement from the securities intermediary;
- (2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- (4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) 'Issuer's jurisdiction' means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subdivisions (a)(2) through (5) of this section.

(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:

- (1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- (2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- (3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.
- (4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision (3) of this subsection, the securities

intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

"§ 25-8-111. Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Article and affects another party who does not consent to the rule.

"§ 25-8-112. Creditor's legal process.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

"§ 25-8-113. Statute of frauds inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

"§ 25-8-114. Evidentiary rules concerning certificated securities.

The following rules apply in an action on a certificated security against the issuer:

- (1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.
- (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
- (3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.
- (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

"§ 25-8-115. Securities intermediary and others not liable to adverse claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

- (1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
- (2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
- (3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

"§ 25-8-116. Securities intermediary as purchaser for value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

"PART 2.

"ISSUE AND ISSUER.

"§ 25-8-201. Issuer.

(a) With respect to an obligation on or a defense to a security, an 'issuer' includes a person that:

- (1) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

- (2) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;
- (3) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or
- (4) Becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

"§ 25-8-202. Issuer's responsibility and defenses; notice of defect or defense.

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

- (1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.
- (2) Subdivision (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in G.S. 25-8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security 'when, as and if issued' or 'when distributed' in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

"§ 25-8-203. Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

- (1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or
- (2) Is not covered by subdivision (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

"§ 25-8-204. Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

- (1) The security is certificated and the restriction is noted conspicuously on the security certificate; or
- (2) The security is uncertificated and the registered owner has been notified of the restriction.

"§ 25-8-205. Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

- (1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or
- (2) An employee of the issuer, or of any of the persons listed in subdivision (1) of this section, entrusted with responsible handling of the security certificate.

"§ 25-8-206. Completion of alteration of security certificate.

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

"§ 25-8-207. Rights and duties of issuer with respect to registered owners.

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

"§ 25-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) The certificate is genuine;

(2) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

"§ 25-8-209. Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

"§ 25-8-210. Overissue.

(a) In this section, 'overissue' means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

"PART 3.

"TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES.

"§ 25-8-301. Delivery.

(a) Delivery of a certificated security to a purchaser occurs when:

- (1) The purchaser acquires possession of the security certificate;
- (2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
- (3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

- (1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
- (2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

"§ 25-8-302. Rights of purchaser.

(a) Except as otherwise provided in subsections (b) and (c) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

"§ 25-8-303. Protected purchaser.

(a) 'Protected purchaser' means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (1) Gives value;
- (2) Does not have notice of any adverse claim to the security; and
- (3) Obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

"§ 25-8-304. Indorsement.

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in G.S. 25-8-108 and not an obligation that the security will be honored by the issuer.

"§ 25-8-305. Instruction.

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by G.S. 25-8-108 and not an obligation that the security will be honored by the issuer.

"§ 25-8-306. Effect of guaranteeing signature, indorsement, or instruction.

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

- (1) The signature was genuine;
- (2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
- (3) The signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- (1) The signature was genuine;
- (2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
- (3) The signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

- (1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
- (2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

"§ 25-8-307. Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

"PART 4.

"REGISTRATION.

"§ 25-8-401. Duty of issuer to register transfer.

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

- (1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
- (2) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
- (3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (G.S. 25-8-402);

- (4) Any applicable law relating to the collection of taxes has been complied with;
- (5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with G.S. 25-8-204;
- (6) A demand that the issuer not register transfer has not become effective under G.S. 25-8-403, or the issuer has complied with G.S. 25-8-403(b) but no legal process or indemnity bond is obtained as provided in G.S. 25-8-403(d); and
- (7) The transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

"§ 25-8-402. Assurance that indorsement or instruction is effective.

(a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

- (1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
- (2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
- (3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to G.S. 25-8-107(a)(4) or G.S. 25-8-107(a)(5), appropriate evidence of appointment or incumbency;
- (4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (5) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

- (1) 'Guaranty of the signature' means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.
- (2) 'Appropriate evidence of appointment or incumbency' means:
 - (i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or
 - (ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

"§ 25-8-403. Demand that issuer not register transfer.

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

- (1) The certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;
- (2) A demand that the issuer not register transfer had previously been received; and
- (3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subdivision (b)(3) of this section may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

- (1) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
- (2) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

"§ 25-8-404. Wrongful registration.

(a) Except as otherwise provided in G.S. 25-8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

- (1) Pursuant to an ineffective indorsement or instruction;

- (2) After a demand that the issuer not register transfer became effective under G.S. 25-8-403(a) and the issuer did not comply with G.S. 25-8-403(b);
- (3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
- (4) By an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by G.S. 25-8-210.

(c) Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

"§ 25-8-405. Replacement of lost, destroyed, or wrongfully taken security certificate.

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

- (1) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;
- (2) Files with the issuer a sufficient indemnity bond; and
- (3) Satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by G.S. 25-8-210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

"§ 25-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under G.S. 25-8-404 or a claim to a new security certificate under G.S. 25-8-405.

"§ 25-8-407. Authenticating trustee, transfer agent, and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to

the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

"PART 5.

"SECURITY ENTITLEMENTS.

"§ 25-8-501. Securities account; acquisition of security entitlement from securities intermediary.

(a) 'Securities account' means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

- (1) Indicates by book entry that a financial asset has been credited to the person's securities account;
- (2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or
- (3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

"§ 25-8-502. Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under G.S. 25-8-501 for value and without notice of the adverse claim.

"§ 25-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in G.S. 25-8-511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the

security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under G.S. 25-8-505 through G.S. 25-8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

- (1) Insolvency proceedings have been initiated by or against the securities intermediary;
- (2) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
- (3) The securities intermediary violated its obligations under G.S. 25-8-504 by transferring the financial asset or interest therein to the purchaser; and
- (4) The purchaser is not protected under subsection (e) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under G.S. 25-8-504.

"§ 25-8-504. Duty of securities intermediary to maintain financial asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

"§ 25-8-505. Duty of securities intermediary with respect to payments and distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

"§ 25-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

"§ 25-8-507. Duty of securities intermediary to comply with entitlement order.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

"§ 25-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

"§ 25-8-509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

(a) If the substance of a duty imposed upon a securities intermediary by G.S. 25-8-504 through G.S. 25-8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by G.S. 25-8-504 through G.S. 25-8-508 is subject to:

- (1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and
- (2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) G.S. 25-8-504 through G.S. 25-8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

"§ 25-8-510. Rights of purchaser of security entitlement from entitlement holder.

(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under G.S. 25-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains

control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

"§ 25-8-511. Priority among security interests and entitlement holders.

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders."

Section 2. G.S. 25-9-103(6) reads as rewritten:

~~"(6) Uncertificated Securities. -- The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.~~

~~Investment property. --~~

~~(a) This subsection applies to investment property.~~

~~(b) Except as otherwise provided in paragraph (f) of this subsection, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.~~

~~(c) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in G.S. 25-8-110(d).~~

~~(d) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in G.S. 25-8-110(e).~~

~~(e) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or~~

nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a 'commodity intermediary's jurisdiction' for purposes of this paragraph:

- (i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary jurisdiction.
- (ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- (iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.
- (iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.
- (f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located."

Section 3. G.S. 25-9-105 reads as rewritten:

"§ 25-9-105. *Definitions and index of definitions.*

(1) In this Article unless the context otherwise requires:

- (a) 'Account debtor' means the person who is obligated on an account, chattel paper or general intangible;
- (b) 'Chattel paper' means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) 'Collateral' means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

- (d) 'Debtor' means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term 'debtor' means the owner of a collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- (e) 'Deposit account' means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;
- (f) 'Document' means document of title as defined in the general definitions of article 1 (G.S. 25-1-201), and a receipt of the kind described in subsection (2) of G.S. 25-7-201;
- (g) 'Encumbrance' includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) 'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures (G.S. 25-9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;
- (i) 'Instrument' means a negotiable instrument ~~(defined in G.S. 25-3-104), (defined in G.S. 25-3-104) or a certificated security (defined in G.S. 25-8-102)~~ or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment; assignment. The term does not include investment property;
- (j) 'Mortgage' means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- (k) An advance is made 'pursuant to commitment' if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;
- (l) 'Security agreement' means an agreement which creates or provides for a security interest;
- (m) 'Secured party' means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this ~~article~~ Article and the sections in which they appear are:

- 'Account.' (G.S. 25-9-106).
- 'Attach.' (G.S. 25-9-203).
- 'Commodity account.' (G.S. 25-9-115).
- 'Commodity contract.' (G.S. 25-9-115).
- 'Commodity customer.' (G.S. 25-9-115).
- 'Commodity intermediary.' (G.S. 25-9-115).
- 'Construction mortgage.' (G.S. 25-9-313(1)).
- 'Consumer goods.' (G.S. 25-9-109(1)).
- 'Control.' (G.S. 25-9-115).
- 'Equipment.' (G.S. 25-9-109(2)).
- 'Farm products.' (G.S. 25-9-109(3)).
- 'Fixture.' (G.S. 25-9-313(1)).
- 'Fixture filing.' (G.S. 25-9-313(1)).
- 'General intangibles.' (G.S. 25-9-106).
- 'Inventory.' (G.S. 25-9-109(4)).
- 'Investment property.' (G.S. 25-9-115).
- 'Lien creditor.' (G.S. 25-9-301(3)).
- 'Proceeds.' (G.S. 25-9-306(1)).
- 'Purchase money security interest.' (G.S. 25-9-107).
- 'United States.' (G.S. 25-9-103).

(3) The following definitions in other ~~articles~~ Articles apply to this ~~article~~:

- 'Broker.' (G.S. 25-8-102).
- 'Certificated security.' (G.S. 25-8-102).
- 'Check.' (G.S. 25-3-104).
- 'Clearing corporation.' (G.S. 25-8-102).
- 'Contract for sale.' (G.S. 25-2-106).
- 'Control.' (G.S. 25-8-106).
- 'Delivery.' (G.S. 25-8-301).
- 'Entitlement holder.' (G.S. 25-8-102).
- 'Financial asset.' (G.S. 25-8-102).
- 'Holder in due course.' (G.S. 25-3-302).
- 'Note.' (G.S. 25-3-104).
- 'Sale.' (G.S. 25-2-106).
- 'Securities intermediary.' (G.S. 25-8-102).
- 'Security.' (G.S. 25-8-102).
- 'Security certificate.' (G.S. 25-8-102).
- 'Security entitlement.' (G.S. 25-8-102).
- 'Uncertificated security.' (G.S. 25-8-102).

(4) In ~~addition—article~~ addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this ~~article~~. Article."

Section 4. G.S. 25-9-106 reads as rewritten:

"§ 25-9-106. *Definitions: 'Account'; 'general intangibles.'*"

'Account' means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. 'General intangibles'

means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts."

Section 5. Article 9 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"§ 25-9-115. Investment property.

(1) In this Article:

- (a) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (b) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:
 - (i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws: or
 - (ii) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (c) 'Commodity customer' means a person for whom a commodity intermediary carries a commodity contract on its books.
- (d) 'Commodity intermediary' means:
 - (i) A person who is registered as a futures commission merchant under the federal commodities laws: or
 - (ii) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.
- (e) 'Control' with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in G.S. 25-8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.
- (f) 'Investment property' means:
 - (i) A security, whether certificated or uncertificated;
 - (ii) A security entitlement;
 - (iii) A securities account;
 - (iv) A commodity contract; or

(v) A commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

- (d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.
 - (e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.
 - (f) In all other cases, priority between conflicting security interests in investment property is governed by G.S. 25-9-312(5), (6), and (7). G.S. 25-9-312(4) does not apply to investment property.
- (6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the secured interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking."

Section 6. Article 9 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"§ 25-9-116. Security interest arising in purchase or delivery of financial asset.

(1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets, and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected."

Section 7. G.S. 25-9-203(1) reads as rewritten:

"(1) Subject to the provisions of G.S. 25-4-208 on the security interest of a collecting bank, ~~G.S. 25-8-321 on security interests in securities~~ G.S. 25-9-115 and G.S. 25-9-116 on security interests in investment property, and G.S. 25-9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured

party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

- (b) value has been given; and
- (c) the debtor has rights in the collateral."

Section 8. G.S. 25-9-301(1) reads as rewritten:

"(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons entitled to priority under G.S. 25-9-312;
- (b) a person who becomes a lien creditor before the security interest is perfected;
- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) in the case of accounts and accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected."

Section 9. G.S. 25-9-302(1) reads as rewritten:

"(1) A financing statement must be filed to perfect all security interests except the following:

- (a) a security interest in collateral in possession of the secured party under G.S. 25-9-305;
- (b) a security interest temporarily perfected in instruments, instruments, certificated securities, or documents without delivery under G.S. 25-9-304 or in proceeds for a 10-day period under G.S. 25-9-306;
- (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) a purchase money security interest in consumer goods; but compliance with G.S. 20-58 et seq. is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in G.S. 25-9-313;
- (e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
- (f) a security interest of a collecting bank (G.S. 25-4-208) ~~or in securities (G.S. 25-8-321)~~ or arising under the article on sales (see G.S. 25-9-113) or covered in subsection (3) of this section;
- (g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee ~~thereunder, thereunder;~~
- (h) a security interest in investment property which is perfected without filing under G.S. 25-9-115 or G.S. 25-9-116."

Section 10. G.S. 25-9-304 reads as rewritten:

"§ 25-9-304. *Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.*

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than ~~certificated securities or~~ instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of G.S. 25-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in ~~instruments (other than certificated securities)~~ instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an ~~instrument (other than a certificated security)~~ instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of G.S. 25-9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article."

Section 11. G.S. 25-9-305 reads as rewritten:

"§ 25-9-305. *When possession by secured party perfects security interest without filing.*

A security interest in letters of credit and advices of credit (subsection (2)(a) of G.S. 25-5-116), goods, ~~instruments (other than certificated securities)~~ instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the

bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party."

Section 12. G.S. 25-9-306(1) reads as rewritten:

"(1) 'Proceeds' includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are 'cash proceeds.' All other proceeds are 'noncash proceeds.'"

Section 13. G.S. 25-9-306(3) reads as rewritten:

"(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

- (a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; ~~or~~
- (b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~
- (c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or
- (e) ~~(d)~~ the security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type."

Section 14. G.S. 25-9-309 reads as rewritten:

"§ 25-9-309. *Protection of purchasers of instruments, ~~documents~~ documents, and securities.*

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (G.S. 25-3-302) or a holder to whom a negotiable document of title has been duly negotiated (G.S. 25-7-501) or a bona fide protected purchaser of a security (~~G.S. 25-8-302~~) (G.S. 25-8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers."

Section 15. G.S. 25-9-312(1) reads as rewritten:

"(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected,

accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on ~~consignments~~, consignments; G.S. 25-9-115 on security interests in investment property."

Section 16. G.S. 25-9-312(7) reads as rewritten:

"(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under ~~G.S. 25-8-321 on securities~~, G.S. 25-9-115 or G.S. 25-9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 17. G.S. 25-1-105(2) reads as rewritten:

"(2) Where one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. (G.S. 25-2-402).

Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).

Applicability of the article on investment securities. (~~G.S. 25-8-106~~), (G.S. 25-8-110).

Perfection provisions of the article on secured transactions. (G.S. 25-9-103).

Governing law in the article on Funds Transfers. (G.S. 25-4A-507)."

Section 18. G.S. 25-1-206(2) reads as rewritten:

"(2) Subsection (1) of this section does not apply to contracts for the sale of goods (G.S. 25-2-201) nor of securities (~~G.S. 25-8-319~~) (G.S. 25-8-113) nor to security agreements (G.S. 25-9-203)."

Section 19. G.S. 25-4-104(a)(6) reads as rewritten:

"(6) 'Documentary draft' means a draft to be presented for acceptance or payment if specified documents, certificated securities (G.S. 25-8-102) or instructions for uncertificated securities (~~G.S. 25-8-308~~), (G.S. 25-8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft."

Section 20. G.S. 25-5-114(2) reads as rewritten:

"(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (G.S. 25-7-507) or of a certificated security (~~G.S. 25-8-306~~) (G.S. 25-8-108) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (G.S. 25-3-302) and in an appropriate case would make it a

person to whom a document of title has been duly negotiated (G.S. 25-7-502) or a ~~bona fide~~ protected purchaser of a certificated security (~~G.S. 25-8-302~~); (G.S. 25-8-303); and

- (b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor."

Section 21. G.S. 25-10-104(2) is repealed.

Section 22. G.S. 28A-13-3(a)(10) reads as rewritten:

"(10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

- a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and
- b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in ~~G.S. 25-8-102(3)~~, G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions."

Section 23. Article 2 of Chapter 32 of the General Statutes is repealed.

Section 24. G.S. 36A-70(2) reads as rewritten:

"(2) The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the trustee or when such securities are deposited by the fiduciary in a clearing corporation as defined in ~~G.S. 25-8-102(3)~~, G.S. 25-8-102."

Section 25. G.S. 53-47(a) reads as rewritten:

"(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the capital stock or other securities of any other state, national or foreign bank or trust company, and in any other industrial bank, savings bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit taking entity chartered or existing under any federal, state, or foreign law including, but not limited to, the capital stock of clearing corporations defined in ~~G.S. 25-8-102(3)~~, G.S. 25-8-102, the capital stock or other securities of central reserve banks whose capital stock exceeds one million dollars (\$1,000,000) and the capital stock of an Edge or Agreement corporation. As used in this Chapter, the term "bankers' bank" means an insured depository financial institution,

organized and chartered to do business exclusively with other banks and savings institutions, and the stock of which, or the stock of the holding company which controls such bank, is owned exclusively (except to the extent directors' qualifying shares are required by law) by banks or savings institutions. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the 'Edge Act', (12 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making the investment."

Section 26. G.S. 53-159.1 reads as rewritten:

"§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities in a clearing corporation as defined in ~~G.S. 25-8-102(3)~~. G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State-chartered institutions, the State Banking Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A bank or trust company acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such clearing corporation. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited."

Section 27. G.S. 78A-63(i) reads as rewritten:

"(i) Interest charged by a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or registered under this Chapter, as now or hereafter amended, on a debit balance in an account for a customer, shall be exempt from the provisions of Chapter 24 of the North Carolina General Statutes if such debit balance is payable at will without penalty and is secured by securities as defined in ~~the Uniform Commercial Code, Article 8, Investment Securities, G.S. 25-8-101 through 25-8-406.~~ G.S. 25-8-102."

Section 28. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 8 and conforming and miscellaneous amendments to Articles 1, 4, 5, 9, and 10 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 29. (a) If a security interest in a security is perfected at the date this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at the date this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

(b) This act becomes effective October 1, 1997, and does not affect actions or proceedings commenced before that date.

In the General Assembly read three times and ratified this the 5th day of June, 1997.

Became law upon approval of the Governor at 3:42 p.m. on the 12th day of June, 1997.

S.B. 447

CHAPTER 182

AN ACT TO ESTABLISH THE LUMBERTON ECONOMIC DEVELOPMENT AND TOURIST DISTRICT AND TO AUTHORIZE THE ISSUANCE OF CERTAIN ABC PERMITS IN THIS TYPE OF DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. District Created. -- The Lumberton Economic Development and Tourist District is created. The District consists of the area described in Section 2 of this act. The District is a body politic and corporate and a political subdivision of the State. The District is subject to the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes.

The Lumberton City Council shall serve, ex officio, as the governing body of the District, and the officers of the City Council shall likewise serve as the officers of the governing body of the District. The governing body of the District shall promote economic development and tourism in the District and do all acts reasonably necessary to fulfill this purpose.

A simple majority of the governing body of the District constitutes a quorum. Approval by a majority of a quorum is sufficient to determine any matter before the governing body of the District.

Section 2. Description of District. -- The Lumberton Economic Development and Tourist District consists of the following area:

BEGINNING at a point where the western right-of-way line of Interstate 95 intersects Lumber River and runs thence from said beginning point in a western direction with Lumber River to the run of Saddletree Swamp; thence in a northern direction with the run of Saddletree Swamp to the southern right-of-way line of North Carolina Highway 211 (also known as Roberts Avenue); thence with southern right-of-way line of North Carolina Highway 211 in an eastern direction to a point where the southern right-of-way line of said highway intersects the run of Five Mile Branch; thence in a northern direction with the run of Five Mile Branch to a point in the run of said branch being located 500 feet west of (perpendicular distance) the western right-of-way line of Interstate 95; thence leaving said Five Mile Branch in a northern direction with a line being 500 feet west of and parallel to the western right-of-way line of Interstate 95 to a point in the eastern property line of Mayfair Subdivision; thence in a general northern direction with the various eastern property lines of Mayfair Subdivision to the eastern property line of Mayfair North Subdivision; thence in a general northern direction with the various eastern property lines of Mayfair North Subdivision and beyond to a point in a ditch just south of the AA building; thence in a western direction with said ditch to the run of Saddletree Swamp; thence with the run of Saddletree Swamp in a northern direction approximately 1900 feet to a point; thence leaving said swamp in an eastern direction to and with the southern line of property owned by Lumberton Motors (Deed Book 920, Page 557) to a point in said southern line being 500 feet (perpendicular distance) west of the western right-of-way line of Interstate 95; thence in a northern direction 500 feet west of and parallel to the western right-of-way line of Interstate 95 to a point 500 feet south of and perpendicular to U.S. Highway 301 (also known as Fayetteville Road); thence in a northwestern direction 500 feet south of and parallel to U.S. Highway 301 to a point where this line intersects the northwestern line of Lawrence H. Oliver's property (Deed Book 628, Pages 673 and 674) if it were extended; thence in a northeastern direction to, with, and beyond Lawrence H. Oliver's northwestern property line to a point in the northeastern right-of-way line of U.S. Highway 301; thence with the northeastern right-of-way line of U.S. Highway 301 in a southeastern direction to the most southern corner of Robeson Community College property; thence with the southeastern property line of Robeson Community College property to the western right-of-way line of Interstate 95; thence crossing Interstate 95 to a point in the eastern right-of-way line of said Interstate 95, said point being Thomas Carr Gibson's southwest corner

(Deed Book 775, Page 665); thence with and beyond Gibson's southern line (Deed Book 775, Page 665, Deed Book 490, Pages 84 and 85, and Deed Book 485, Page 335) to a point in the center-line of Secondary Road 1005 (also known as Barker Ten Mile Road); thence with the center line of Secondary Road 1005 in a southern direction to a point at the intersection of the center line of said Secondary Road 1005 with the northeastern right-of-way line of U.S. Highway 301 (also known as Secondary Road 1997 and Fayetteville Road); thence with the eastern right-of-way line of U.S. Highway 301, in a southeastern direction to a point in the run of Five Mile Branch; thence in a northeastern direction with the run of Five Mile Branch approximately 352.63 feet to a point in the run of said branch; thence leaving said branch 300 feet east of and parallel to U.S. Highway 301 approximately 488.4 feet to a point in the northern right-of-way line of a private drive (54 feet in width); thence with the northern right-of-way line of said private drive in a western direction to a point in the western right-of-way line of said U.S. Highway 301; thence with said western right-of-way line to a point 300 feet (perpendicular distance) south of the southern right-of-way line of Liberty Hill Road; thence in a western direction 300 feet south of and parallel to the southern right-of-way line of Liberty Hill Road to a point in the eastern right-of-way line of Independence Drive; thence with the eastern right-of-way line of Independence Drive in a northern direction to a point in the southern right-of-way line of Liberty Hill Road; thence with the southern right-of-way line of Liberty Hill Road in a western direction crossing Independence Drive to the northwestern property corner of property owned by the Church of Jesus Christ of Latter Day Saints; thence in a southern direction with the western property line of said church property to a point 300 feet (perpendicular distance) south of Liberty Hill Road; thence in a western direction 300 feet south of and parallel to the southern right-of-way line of Liberty Hill Road to a point 500 feet east of (perpendicular distance) the eastern right-of-way of Interstate 95; thence in a southern direction 500 feet east of and parallel to the eastern right-of-way line of Interstate 95 to a point 500 feet north (perpendicular distance) of North Carolina Highway 211 (also known as Roberts Avenue); thence in a southeastern direction 500 feet north of and parallel to North Carolina Highway 211 to a point where if extended the western right-of-way line of McMillian Avenue would intersect this line; thence in a southern direction to and with the western right-of-way line of McMillian Avenue to a point being 135 feet south (perpendicular distance) of North Carolina Highway 211; thence in a western direction 135 feet southeast of and parallel to North Carolina Highway 211, crossing Rowland Avenue to a point in the western right-of-way line of Rowland Avenue; thence in a southern direction with the western right-of-way line of Rowland Avenue to a point in the northern right-of-way line of a now abandoned V & C S Railroad right-of-way; thence with said railroad right-of-way line in a southwestern and then southern direction to a point on the northern line of Jennings Cotton Mills Subdivision (Map Book 7, Page 48) approximately 80 feet north of West Twenty-fourth Street; thence in a western direction, with the northern line of said Jennings Cotton Mills Subdivision line to a point approximately 218.39 feet east of Interstate 95; thence in a southern direction

approximately 79.72 feet to a point in the northern right-of-way line of West Twenty-fourth Street at its intersection with Delmar Street; thence in a western direction with the northern right-of-way line of Twenty-fourth Street to a point 200 feet east (perpendicular distance) of the eastern right-of-way line of Interstate 95; thence in a southern direction 200 feet east of and parallel to Interstate 95 to a point in the center line of Carthage Road; thence in a western direction with the center line of Carthage Road to the intersection of the center line of said Carthage Road with the western right-of-way line of Interstate 95; and thence in a southern direction to and with the western right-of-way line of Interstate 95 to the point of beginning.

Section 3. G.S. 18B-1006 is amended by adding a new subsection to read:

"(l) Economic Development and Tourist District. -- Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district. An 'economic development and tourist district' is a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly enacted before July 1, 1997 which specifically designates it in the act as an 'economic development and tourist district', and was established for the purpose of promoting economic development and tourism in the district. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the city in which the district is located. The governing body of a district that is eligible for mixed beverages permits under this subsection must file with the Commission a certified copy of a map setting out the boundaries of the district."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of June, 1997.

Became law upon approval of the Governor on the 13th day of June, 1997.

H.B. 102

CHAPTER 183

AN ACT TO REQUIRE THAT THERE BE AT LEAST ONE VOTING PLACE IN MITCHELL COUNTY WITHIN EVERY TOWNSHIP THAT EXISTED IN 1995.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3, the Mitchell County Board of Elections shall provide for at least one voting place within every township in Mitchell County that was in existence on January 1, 1995.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law on the date it was ratified.

H.B. 342

CHAPTER 184

AN ACT TO RAISE THE THRESHOLD FOR THE INFORMAL BIDDING PROCEDURE FOR LETTING PUBLIC CONTRACTS BY THE COUNTY OF MECKLENBURG.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars (\$20,000)~~, one hundred thousand dollars (\$100,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131."

Section 2. Section 1 of Chapter 712 of the 1993 Session Laws is repealed.

Section 3. Section 1 of this act applies to the County of Mecklenburg only.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law on the date it was ratified.

H.B. 604

CHAPTER 185

AN ACT TO ALLOW THE TOWNS OF MOREHEAD CITY AND NEWPORT TO EXERCISE EXTRATERRITORIAL PLANNING JURISDICTION OVER AN AREA EXTENDING NOT MORE THAN TWO MILES FROM THEIR CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. The Towns of Morehead City and Newport may exercise extraterritorial planning jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes within an area extending not more than two miles beyond their respective corporate limits. In the area where the Towns'

extraterritorial planning jurisdiction overlaps, the dividing line shall begin where the run of Hull Swamp Creek empties into the Newport River, and then runs with the run of Hull Swamp Creek to the northwest corner of the property of Merritt-Williams Ford in the southern right-of-way margin of U.S. Highway 70, thence northwestwardly with the southern margin of U.S. Highway 70 to the northwesternmost corner of the property of Paul Wysocki (tax parcel number 634608990762), and thence with the Wysocki northwest line in a southwestern direction to the North property line of Mamie Murdoch (tax parcel number 634704708233), and thence westwardly and southwardly with the north and West lines of the Murdoch property back to the run of Hull Swamp Creek.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law on the date it was ratified.

H.B. 687

CHAPTER 186

AN ACT TO AUTHORIZE THE APPOINTMENT OF A SPECIAL BOARD OF EQUALIZATION AND REVIEW FOR HENDERSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322 reads as rewritten:

"§ 105-322. *Henderson County board of equalization and review.*

(a) ~~Personnel. Board Composed of Commissioners if Special Board Not Appointed.~~ -- ~~Except as otherwise provided herein, If the board of county commissioners does not appoint a special board of equalization and review as provided in this section, the board of equalization and review of each the county shall be composed of the members of the board of county commissioners.~~

(a1) Appointment of Special Board. -- Upon the adoption of a resolution so providing, the board of commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. ~~The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board.~~ The special board shall be composed of five members and three alternate members. The board of commissioners shall also designate the chairman a chair of the special board, board from the membership of the board. The special board shall elect a vice-chair from its membership. To be eligible for appointment to the special board, a person must have resided in Henderson County for at least three years immediately preceding the appointment and the board of county commissioners must find that the person has satisfactory knowledge of or experience in real estate, fee appraisals, banking, farming, or other business management.

Members of the special board shall serve a term of two years. No member may serve more than three consecutive terms. Vacancies shall be filled by the board of county commissioners; a successor appointed to fill a

vacancy shall serve for the remainder of the term. Members of the special board shall serve at the pleasure of the board of county commissioners.

~~The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners. The resolution creating the special board shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.~~

~~Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.~~

(a2) Quorum; Alternates. -- A majority of the members of the special board shall constitute a quorum for the purpose of transacting business. A decision of the special board shall be made by a majority of the members present. An alternate member of the special board shall have all the powers and duties of a regular board member when sitting as a member of the board or of any subcommittee or panel created by the board. The board of county commissioners shall adopt a resolution setting forth any other provisions it deems necessary to govern the proceedings of the special board and any subcommittee or panel created by the special board.

(b) Compensation. -- The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. -- Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: 'that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,'. The oath must be filed with the clerk of the board of county commissioners.

(d) Clerk and Minutes. -- The assessor or a person designated by the assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, shall draft all written decisions of the special board, and shall give to the board such information as ~~he~~ the clerk may have or can obtain with respect to the listing and valuation of taxable property in the county. The chair of the special board shall review all written decisions drafted by the clerk. Only the chair of the special board can execute the decisions of the special board.

(e) Time of Meeting. -- Each Except as otherwise provided in this section, each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the The board shall complete its duties on or before the third Monday following its first meeting advertised adjournment date unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 December 1 except to hear and determine requests made under

the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. ~~In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the~~ The board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below. subdivisions (g)(1) and (g)(2) of this section.

(f) Notice of Meetings and Adjournment. -- A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment.

(g) Powers and Duties. -- The board of equalization and review shall have the following powers and duties:

(1) ~~Powers and Duties.~~ -- ~~It shall be the duty of the board of equalization and review to~~ Duty to Review Tax Lists. -- The board shall examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

- a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.
- b. Correct all errors in the names of persons and in the description of properties subject to taxation.
- c. Increase or reduce the appraised value of any property that, in the board's opinion, shall have been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

- d. Cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions of this Subchapter.
 - e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.
 - f. Give written notice to the taxpayer at his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).
- (2) Duty to Hear Taxpayer Appeals. -- On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others.
- a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.
 - b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.
 - c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal. The board shall render a decision on each appeal within five days of the hearing date.
 - d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on his appeal not later than 30 days after the board's adjournment.
- (3) Powers in Carrying Out Duties. -- In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:
- a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its

discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by him if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

- b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chairman of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.

- (4) **Power to Submit Reports.** -- Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal.

- (5) **Duty to Change Abstracts and Records After Adjournment.** -- After adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this section, the board of equalization and review shall exercise the authority granted to the board of county commissioners under G.S. 105-325. This duty includes hearing appeals of the appraisal, situs, and taxability of classified motor vehicles pursuant to G.S. 105-330.2(b).

(h) **Motor Vehicle and Review Subcommittee.** -- The chair of the board of equalization and review shall appoint a subcommittee at the board's first meeting of the calendar year. The subcommittee shall hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b) and may meet as needed to exercise this authority. The subcommittee shall consist of three board members and three alternate members, which may include the alternate board members. Three members shall constitute a quorum for the purpose of transacting business. A decision of the subcommittee shall be made by a majority of the members.

(i) **Reappraisal Year Panels.** -- In any reappraisal year, the chair of the board of equalization and review may divide the board into separate panels consisting of three members, which may include the alternate board

members. The chair shall designate one member of each panel to serve as its chair and may change the members of the panels during the year. Three members of each panel shall constitute a quorum for the purpose of transacting business. A decision of the panel shall be made by a majority of the members. A decision of a panel constitutes a decision of the board of equalization and review."

Section 2. Two of the initial five appointees to the special board of equalization and review shall be appointed to serve a one-year term.

Section 3. Chapter 155 of the 1975 Session Laws is repealed.

Section 4. This act applies only to Henderson County.

Section 5. This act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law on the date it was ratified.

H.B. 772

CHAPTER 187

AN ACT TO AMEND THE CHARTER OF THE TOWN OF SHALLOTTE TO AUTHORIZE THE TOWN TO ENFORCE ORDINANCES AS PROVIDED IN THE GENERAL LAW, TO ANNEX PROPERTY TO THE TOWN OF SHALLOTTE, AND TO CORRECT AN ERROR IN THE DESCRIPTION OF DISTRICTS IN THE WHITEVILLE CITY SCHOOL ADMINISTRATIVE UNIT.

The General Assembly of North Carolina enacts:

Section 1. Section 9 of the Charter of Shallotte, being Chapter 339 of the Public Laws of 1899, reads as rewritten:

"Sec. 9. Violations.

~~Any person violating any ordinance of said town shall be deemed guilty of a misdemeanor, but the punishment thereof upon conviction shall not exceed a fine of \$50 or imprisonment for 30 days. The provisions of G.S. 160A-175 govern violations and enforcement of ordinances adopted by the Board of Aldermen."~~

Section 2. The corporate limits of the Town of Shallotte are extended to include the following described area:

Being all of that tract of land containing 35.30 acres, more or less, lying adjacent to Town of Shallotte, Shallotte and Waccamaw Townships, Brunswick County, N.C., and encompassing the 100 foot right-of-way of N.C. Highway 130; and, being more particularly described by courses based on N.C. Grid North per N.C. Department of Transportation highway plans project number 8.1310802 R-97E and distances according to a survey by Jimmy D. Etheridge, R.L.S. No. 3415 and Bobby M. Long and Associates, dated May 16, 1997.

Commencing at an existing N.C. Department of Transportation right-of-way monument located at station number 23+78 Ramp "B" 80 foot left as shown on N.C. Department of Transportation highway plans, project number 8.1310802 R 97-E, and having N.C. Grid coordinates: North = 83078.5066 feet, East = 2179691.659 feet; thence running north 48 degrees 14 minutes 03 seconds west 183.70 feet to a right-of-way

monument, thence north 15 degrees 20 minutes 39 seconds west a chord distance of 65.48 feet to a right-of-way monument located on the southern right-of-way line of N.C. Highway 130, 100 foot right-of-way, thence running with the said right-of-way line north 61 degrees 53 minutes 17 seconds west 69.89 feet to an existing iron, thence north 61 degrees 06 minutes 48 seconds west 614.51 feet to an existing iron, thence north 61 degrees 11 minutes 37 seconds west 9233.92 feet to an existing iron pipe, thence north 59 degrees 49 minutes 31 seconds west 139.84 feet, thence north 58 degrees 07 minutes 51 seconds west 101.41 feet, thence north 55 degrees 55 minutes 20 seconds west 101.74 feet, thence north 53 degrees 20 minutes 34 seconds west 102.04 feet, thence north 50 degrees 16 minutes 48 seconds west 102.22 feet, thence north 47 degrees 11 minutes 49 seconds west 102.07 feet, thence north 44 degrees 38 minutes 56 seconds west 101.91 feet, thence north 41 degrees 50 minutes 55 seconds west 101.82 feet, thence north 39 degrees 43 minutes 43 seconds west 101.34 feet, thence north 38 degrees 04 minutes 37 seconds west 100.92 feet, thence north 37 degrees 13 minutes 04 seconds west 100.61 feet, thence north 36 degrees 48 minutes 43 seconds west 667.13 feet, thence north 37 degrees 19 minutes 48 seconds west 98.95 feet, thence north 38 degrees 19 minutes 12 seconds west 98.93 feet, thence north 39 degrees 42 minutes 23 seconds west 98.18 feet, thence north 41 degrees 46 minutes 42 seconds west 97.92 feet, thence north 43 degrees 49 minutes 52 seconds west 98.42 feet, thence north 45 degrees 55 minutes 02 seconds west 96.61 feet, thence north 49 degrees 00 minutes 41 seconds west 97.30 feet, thence north 51 degrees 42 minutes 11 seconds west 97.13 feet, thence north 54 degrees 29 minutes 46 seconds west 97.19 feet, thence north 57 degrees 05 minutes 12 seconds west 97.63 feet, thence north 59 degrees 05 minutes 18 seconds west 97.83 feet, thence north 61 degrees 17 minutes 53 seconds west 97.52 feet, thence north 63 degrees 58 minutes 54 seconds west 97.28 feet, thence north 66 degrees 36 minutes 45 seconds west 97.21 feet, thence north 69 degrees 20 minutes 20 seconds west 97.63 feet, thence north 72 degrees 19 minutes 20 seconds west 131.62 feet, thence north 74 degrees 37 minutes 15 seconds west 127.95 feet, thence north 79 degrees 28 minutes 37 seconds west 209.37 feet, thence north 84 degrees 06 minutes 41 seconds west 146.43 feet, thence north 87 degrees 41 minutes 46 seconds west 144.65 feet, thence north 89 degrees 56 minutes 01 seconds west 129.38 feet, thence south 88 degrees 29 minutes 50 seconds west 95.35 feet, thence south 88 degrees 36 minutes 59 seconds west 174.91 feet, thence south 88 degrees 06 minutes 13 seconds west 602.36 feet, thence north 01 degrees 51 minutes 25 seconds west 100.00 feet crossing N.C. Highway 130 to an existing iron located on the northern right-of-way line of said highway, thence running along the northern right-of-way line of said highway north 88 degrees 08 minutes 35 seconds east 336.71 feet to an existing iron the southwest corner of Tract A as shown on Map Cabinet W, Page 257, thence north 88 degrees 03 minutes 23 seconds east 265.50 feet to an existing iron, thence north 88 degrees 36 minutes 59 seconds east 175.79 feet to an existing iron, thence north 88 degrees 29 minutes 50 seconds east 96.61 feet to an existing iron, thence south 89 degrees 56 minutes 01 seconds east 132.71 feet to an existing iron, thence south 87 degrees 41 minutes 46

seconds east 149.73 feet, thence south 84 degrees 06 minutes 41 seconds east 153.60 feet, thence south 79 degrees 28 minutes 37 seconds east 217.65 feet, thence south 74 degrees 37 minutes 15 seconds east 134.89 feet, thence south 72 degrees 19 minutes 20 seconds east 136.43 feet, thence south 69 degrees 20 minutes 20 seconds east 101.71 feet, thence south 66 degrees 36 minutes 45 seconds east 101.88 feet, thence south 63 degrees 58 minutes 54 seconds east 101.92 feet, thence south 61 degrees 17 minutes 53 seconds east 101.79 feet, thence south 59 degrees 05 minutes 18 seconds east 101.50 feet, thence south 57 degrees 05 minutes 12 seconds east 101.64 feet, thence south 54 degrees 29 minutes 46 seconds east 101.89 feet, thence south 51 degrees 42 minutes 11 seconds east 102.01 feet, thence south 49 degrees 00 minutes 41 seconds east 101.91 feet, thence south 45 degrees 55 minutes 22 seconds east 102.36 feet, thence south 43 degrees 49 minutes 52 seconds east 101.18 feet, thence south 41 degrees 46 minutes 42 seconds east 101.48 feet, thence south 39 degrees 42 minutes 23 seconds east 101.22 feet, thence south 38 degrees 19 minutes 12 seconds east 100.91 feet, thence south 37 degrees 19 minutes 48 seconds east 100.72 feet, thence south 36 degrees 48 minutes 43 seconds east 667.13 feet, thence south 37 degrees 13 minutes 04 seconds east 99.16 feet, thence south 38 degrees 04 minutes 37 seconds east 98.72 feet, thence south 39 degrees 43 minutes 43 seconds east 98.05 feet, thence south 41 degrees 50 minutes 55 seconds east 97.52 feet, thence south 44 degrees 38 minutes 56 seconds east 97.24 feet, thence south 47 degrees 11 minutes 49 seconds east 97.15 feet, thence south 50 degrees 16 minutes 49 seconds east 96.86 feet, thence south 53 degrees 20 minutes 34 seconds east 97.11 feet, thence south 55 degrees 55 minutes 20 seconds east 97.57 feet, thence south 58 degrees 07 minutes 51 seconds east 98.00 feet, thence south 59 degrees 49 minutes 31 seconds east 135.98 feet, thence south 61 degrees 10 minutes 52 seconds east 2138.36 feet to an existing iron, thence south 60 degrees 59 minutes 12 seconds east 121.33 feet to an existing iron, thence south 61 degrees 12 minutes 13 seconds east 4259.60 feet to an existing iron, thence south 61 degrees 11 minutes 42 seconds east 209.99 feet to an existing iron pipe, thence south 61 degrees 13 minutes 00 seconds east 1054.37 feet to an existing iron pipe, thence south 61 degrees 11 minutes 52 seconds east 2408.88 feet to an existing N.C. Department of Transportation right-of-way monument, thence south 43 degrees 32 minutes 08 seconds west 195.04 feet to an existing right-of-way monument, the point and place of beginning. Said survey having an error of closure of 1 to 7500+.

Section 3. Section 4 of Chapter 661 of the 1995 Session Laws reads as rewritten:

"Sec. 4. District 1 consists of all of Whiteville City Council District #1 as it was bounded for the 1995 municipal election, but excluding any territory not in the city limits as of January 1, 1990.

District 2 consists of all of Whiteville City Council District #2 as it was bounded for the 1995 municipal election, but excluding any territory not in the city limits as of January 1, 1990, and in addition includes the following areas:

Beginning at the point where the centerline of US Highway 74 Business intersected the western corporate limits of the Town of Whiteville on

January 1, 1990, thence following the centerline of US Highway 74 Business in a westerly direction to ~~the Whiteville/Chadbourn Township line, thence following the Whiteville/Chadbourn Township line in a southeasterly direction~~ the centerline of State Highway 1435, thence following the centerline of State Highway 1435 in a southerly direction across State Highway 1436 to the centerline of State Highway 1429, thence along State Highway 1429 in an easterly direction to the centerline of State Highway 1437, thence following the boundary between State House Districts 14 and 98 as they existed on June 1, 1996, along: State Highway 1437, Pinelog Swamp and Soules Swamp to the point where Soules Swamp intersected the corporate limits of the Town of Whiteville on January 1, 1990, thence following the corporate limits of the Town of Whiteville as they existed on January 1, 1990, in a generally northerly direction to the point and place of beginning.

Beginning at the point where the centerline of US Highway 701 Bypass intersected the southern corporate limits of the Town of Whiteville on January 1, 1990, thence following the boundary between State House Districts 14 and 98 as they existed on June 1, 1996, along: US Highway 701, State Highway 1166, State Highway 1174 ~~(Prison Camp Road)~~, 1174, the corporate limits of the Town of Brunswick as they existed on January 1, 1990, the boundary of Census Blocks 121B/126C and 122B/126C of Census Tract 9910, the corporate limits of the Town of Brunswick as they existed on January 1, 1990, Main Street (State Highway 130), and the Whiteville/Lees Township line easterly to the eastern boundary of the Whiteville City School Administrative Unit; thence in a northerly direction along the boundary of the Whiteville City School Administrative Unit to the centerline of US Highway 74 Business, thence westerly along the centerline of US Highway 74 Business to the intersection with the boundary of District 1, thence following the southern boundary of District 1 to the intersection of the centerline of Maultsby Street and Virgil Street, thence following the eastern and southern boundary of Whiteville City Council District #2 as it was bounded for the 1995 municipal election, (said boundary line excluding any territory not in the city limits as of January 1, 1990) to the point and place of beginning.

District 3 consists of all of the Whiteville City School Administrative Unit located north of US Highway 74 Business not in District 1, and also includes the following described area:

Beginning at the point where the centerline of US Highway 74 Business intersects the ~~Whiteville/Chadbourn Township line, thence following the Township line in a southeasterly direction to the centerline of State Highway 1437, thence following the centerline of State Highway 1437 in a southwesterly direction~~ centerline of State Highway 1435, thence following the centerline of State Highway 1435 in a southerly direction across State Highway 1436 to the intersection with the centerline of State Highway 1429, thence following the centerline of State Highway 1429 westerly to the boundary of the Whiteville City School Administrative Unit, thence in a northerly direction along the boundary of the Whiteville City School Administrative Unit to the centerline of US Highway 74 Business, thence

following the centerline of US Highway 74 Business in an easterly direction to the point and place of beginning.

District 4 consists of all the area of the Whiteville City School Administrative Unit South of US Highway 74 Business which is not in any other district."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law on the date it was ratified.

S.B. 198

CHAPTER 188

AN ACT TO AUTHORIZE THE CITY OF HENDERSONVILLE AND THE TOWN OF LAUREL PARK TO ENTER INTO ANNEXATION AND PAYMENT IN LIEU OF TAX AGREEMENTS WITH THE OWNERS OF CERTAIN CLASSES OF MANUFACTURING PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. A city may, by written agreement approved by the governing board, provide that certain manufacturing industrial property described in the agreement may not be annexed by the city under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes for a period not to exceed 20 years from the effective date of the agreement.

Section 2. The consideration flowing to the city under an agreement authorized by Section 1 of this act shall be annual payments in lieu of taxes. The payments shall be negotiated by the city and the industry involved. Consideration may be given to the economic benefits to the city that are derived from said industry, the number of employees, and the potential for future growth and expansion.

Section 3. Nothing in this act impairs the right of the General Assembly to annex any property by specific local act.

Section 4. This act applies only to the City of Hendersonville and the Town of Laurel Park.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law on the date it was ratified.

H.B. 406

CHAPTER 189

AN ACT TO ALLOW CITIES AND COUNTIES TO ADOPT ORDINANCES THAT IMPOSE A CURFEW ON PERSONS UNDER THE AGE OF EIGHTEEN.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-198. Curfews.

A city may by an appropriate ordinance impose a curfew on persons of any age less than 18."

Section 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-142. Curfews.

A county may by an appropriate ordinance impose a curfew on persons of any age less than 18."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law upon approval of the Governor at 1:10 p.m. on the 18th day of June, 1997.

S.B. 69

CHAPTER 190

AN ACT TO ALLOW STOKES COUNTY TO ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. Acquisition and improvement of school property in certain counties.

(a) **Acquisition by County.** -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) **Construction or Improvement by County.** -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) **Lease or Sale by Board of Education.** -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) **Board of Education May Contract for Construction.** -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) **Scope.** -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck,

Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 1997.

Became law on the date it was ratified.

S.B. 645

CHAPTER 191

AN ACT TO REQUIRE THE DISCLOSURE OF PROPERTY INTERESTS AND ASSETS BY GUILFORD COUNTY BOARD OF EDUCATION MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Every member of the Guilford County Board of Education shall, within 30 days after the effective date of this act or within 30 days after assuming office, whichever comes later, disclose any legal, equitable or beneficial interest the member or the member's spouse may have in any real property which is in Guilford County.

This disclosure shall be filed in writing with the Clerk of Superior Court of Guilford County and shall include all real property which any council member holds title to, individually or jointly, any real property held in trust, as well as any pecuniary interest he may have in any business, firm, or corporation of whatever nature, which holds title to or has any ownership interest in any real property within Guilford County.

Section 2. Every member of the Guilford County Board of Education shall disclose any legal, equitable or beneficial ownership interest he may have in any business, firm, or corporation, of whatever nature, which is doing business with the Guilford County School Administrative Unit pursuant to contracts which have been awarded by the Guilford County School Administrative Unit.

Section 3. Every member of the Guilford County Board of Education shall disclose any legal, equitable or beneficial ownership interest he may have in any business, firm, or corporation, of whatever nature, which is attempting to secure the award of a bid from the Guilford County School Administrative Unit, prior to the award of any contract.

Section 4. The acquisition by any member subject to this act of any legal, equitable or beneficial interest in real property within Guilford County shall be disclosed within 30 days after the acquisition of that property. Any legal, equitable or beneficial ownership interest which any member has in any business, firm, or corporation, of whatever nature, with whom the Guilford County School Administrative Unit is now doing business, shall be disclosed within 30 days after the effective date of this act or within 30 days after acquisition of the ownership interest, whichever is later.

Section 5. Every Guilford Board of Education member who has an ownership interest required to be disclosed by this act shall disqualify himself from voting on any matter involving any such ownership interest which comes for official action before the Guilford County Board of Education.

Section 6. Any member who violates any provision of this act shall be guilty of a Class 1 misdemeanor.

Section 7. This act applies to the Guilford County Board of Education only.

Section 8. This act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 19th day of June, 1997.

Became law on the date it was ratified.

H.B. 1051

CHAPTER 192

AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES WITH RESPECT TO ORGAN PROCUREMENT AND DONATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-403 reads as rewritten:

"§ 130A-403. Definitions.

The following definitions shall apply throughout this Part:

- (1) 'Bank or storage facility' means a facility licensed, accredited or approved under the laws of any state for storage or distribution of a human body or its parts.
- (2) 'Decedent' means a deceased individual and includes a stillborn infant or fetus.
- (3) 'Donor' means an individual who makes a gift of all or part of the individual's body.
- (4) 'Hospital' means a hospital licensed, accredited or approved under the laws of any state and a hospital operated by the United States government, a state or its subdivision, although not required to be licensed under state laws.
- (5) 'Part' means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.
- (6) 'Physician' or 'surgeon' means a physician or surgeon licensed to practice medicine under the laws of any state.
- (7) 'State' includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.
- (7a) 'Tissue bank' means any facility or program operating in North Carolina that is certified by the American Association of Tissue Banks or the Eye Bank Association of America and is involved in procuring, furnishing, donating, or distributing corneas, bones, or other human tissue for the purpose of injecting, transfusing, or transplanting any of them into the human body.
'Tissue bank' does not include a licensed blood bank.

- (8) 'Qualified individual' means any of the following individuals who has completed a course in eye enucleation and has been certified as competent to enucleate eyes by an accredited school of medicine in this State:
- An embalmer licensed to practice in this State;
 - A physician's assistant approved by the North Carolina Medical Board pursuant to G.S. 90-18(13);
 - A registered or a licensed practical nurse licensed by the Board of Nursing pursuant to Article 9A of Chapter 90 of the General Statutes;
 - A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine;
 - A technician who has successfully completed a written examination by the North Carolina Eye and Human Tissue Bank, Inc., certified by the Eye Bank Association of America."

Section 2. G.S. 130A-412.1 reads as rewritten:

"§ 130A-412.1. *Duty of hospitals to establish organ procurement protocols.*

~~(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:~~

- ~~(1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or tissue donation and their option to decline;~~
- ~~(2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;~~
- ~~(3) Require that only the organ procurement agency designated by the Secretary of Health and Human Services be notified of potential organ and tissue donors; and~~
- ~~(4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.~~

~~(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.~~

~~(c) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.~~

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

- (1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths or impending brain deaths meeting criteria for notification

as established by the designated organ procurement organization;
and

- (2) Ensure that notification required under subdivision (1) of this subsection be made as soon as it is determined that brain death is imminent or cardiac death has occurred.

(b) Hospitals shall provide their federally designated organ procurement organizations and tissue banks reasonable access to patients' medical records for the purpose of determining organ or tissue donation potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with reasonable access during regular business hours to the medical records of deceased patients for the following purposes:

- (1) Determining the hospital's organ and tissue donation potential;
(2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and
(3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

(e) Each hospital shall have a signed agreement with its federally designated organ procurement organization that addresses the requirements of this section and the requirements of G.S. 130A-412.2.

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term 'organ and tissue donors' shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from a civil liability arising from gross negligence."

Section 3. Chapter 130A is amended by adding the following new section to read:

"§ 130A-412.2. Duty of designated organ procurement organizations and tissue banks.

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the federally designated organ procurement organization, the federally designated organ procurement organization shall evaluate donation potential.

(b) The federally designated organ procurement organization or tissue bank shall assure that families of potential organ and tissue donors are made aware of the option of organ and tissue donation and their option to decline.

(c) The federally designated organ procurement organization or tissue bank shall, working collaboratively with the hospital, request consent for organ or tissue donation in the order of priority established under G.S. 130A-404(b) and shall have designated, trained staff available to perform the consent process 24 hours a day, 365 days a year.

(d) The federally designated organ procurement organization or tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

(e) All hospital and patient information, interviews, reports, statements, memoranda, and other data obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1 shall be privileged and confidential and may be used by the tissue bank or federally designated organ procurement organization only for the purposes set forth in G.S. 130A-412.1 and shall not be subject to discovery or introduction as evidence in any civil action, suit, or proceeding. However, hospital and patient information, interviews, reports, statements, memoranda, and other data otherwise available are not immune from discovery or use in a civil action, suit, or proceeding merely because they were obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1.

(f) If the hospital is made a party of any action, suit, or proceeding arising out of the failure of a federally designated organ procurement organization or tissue bank to comply with the requirements of this section, the hospital shall be held harmless from any and all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit, or proceeding."

Section 4. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law upon approval of the Governor at 5:00 p.m. on the 19th day of June, 1997.

H.B. 499

CHAPTER 193

AN ACT RELATING TO THE USE OF GEOGRAPHICAL INFORMATION SYSTEM DATABASE INFORMATION BY REAL ESTATE TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-10 reads as rewritten:

"§ 132-10. *Qualified exception for geographical information systems.*

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication

or broadcast by the news ~~media~~ media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law upon approval of the Governor at 5:01 p.m. on the 19th day of June, 1997.

S.B. 376

CHAPTER 194

AN ACT TO AUTHORIZE TEACHING HOSPITALS AFFILIATED WITH CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA TO ESTABLISH CAMPUS LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-40.5 reads as rewritten:

"§ 116-40.5. *Campus law enforcement agencies.*

(a) The Board of Trustees of any constituent institution of The University of North ~~Carolina~~ Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing him and that portion of any public road or highway passing through such property and immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of

any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:02 p.m. on the 19th day of June, 1997.

S.B. 430

CHAPTER 195

AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSION OF INDUSTRIAL HYGIENISTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33. "Industrial Hygiene.

"§ 90-515. Definitions.

The following definitions apply in this Article:

- (1) 'American Board of Industrial Hygiene'. -- A nonprofit corporation incorporated in 1960 in Pennsylvania to improve the practice of the profession of Industrial Hygiene by certifying individuals who meet its education and experience standards and who pass its examination.
- (2) 'Certified Industrial Hygienist (CIH)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for a Certified Industrial Hygienist (CIH).
- (3) 'Industrial Hygiene'. -- The applied science devoted to the anticipation, evaluation, and control of contaminants and stressors that may cause sickness, impaired health and well-being, or significant discomfort and inefficiency among workers and the general public.
- (4) 'Industrial Hygienist'. -- A person who, through special studies and training in chemistry, physics, biology, and related sciences, has acquired competence in industrial hygiene. The special studies and training must have been sufficient to confer competence in the: (i) anticipation and recognition of environmental contaminants and stressors to which workers and other members of the public could be exposed in industrial operations, office buildings, homes, and the general community; (ii) assessment of the likely effects on the health and well-being of individuals exposed to these contaminants and stressors; (iii) quantification of levels of human exposure to these contaminants and stressors through scientific measurement techniques; and (iv) designation of methods to eliminate or to control these

contaminants and stressors, or to reduce the level of human exposure to them.

- (5) 'Industrial Hygienist in Training (IHIT)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for an Industrial Hygienist in Training (IHIT).

"§ 90-516. Unlawful acts.

(a) No person shall practice or offer to practice as a Certified Industrial Hygienist, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is a Certified Industrial Hygienist or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(b) No person shall practice or offer to practice as an Industrial Hygienist in Training, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is an Industrial Hygienist in Training or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(c) A violation of this Article shall be punished as a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for injunctive relief to restrain a person who has violated this Article from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought under this subsection, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable harm.

(e) The venue for actions brought under this Article is the superior court of any county in which the illegal or unlawful acts are alleged to have been committed or in the county where the defendant resides.

(f) Nothing in this Article shall be construed as authorizing a person certified in accordance with this Article to engage in the practice of engineering, nor to restrict or otherwise affect the rights of any person licensed to practice engineering under Chapter 89C of the General Statutes; provided, however, that no person shall use the title 'Certified Industrial Hygienist' unless the person has complied with the provisions of this Article."

Section 2. This act becomes effective December 1, 1997, and applies to violations which occur on or after that date.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:03 p.m. on the 19th day of June, 1997.

ENGINEERING AND DESIGN CONTRACTS WHICH WILL PROMOTE ENGINEERING AND DESIGN QUALITY AND ENSURE MAXIMUM COMPETITION AMONG COMPETING PROFESSIONAL FIRMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.1(f) reads as rewritten:

"(f) The Notwithstanding any other provision of law, the Department of Transportation is required to may solicit proposals under rules and regulations published adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair that are over ten thousand dollars (\$10,000), repair. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation, but the Board of Transportation may consult with the Advisory Budget Commission before awarding any such contract. Transportation."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:04 p.m. on the 19th day of June, 1997.

S.B. 785

CHAPTER 197

AN ACT TO REMOVE THE SUNSET ON CERTAIN DIRECT PAYMENTS UNDER HEALTH INSURANCE POLICIES AND PLANS.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 347 of the 1993 Session Laws reads as rewritten:

"Sec. 5. This act becomes effective October 1, 1993, and applies to all plans and policies with an inception, renewal, or anniversary date on or after October 1, 1993. ~~This act expires October 1, 1998.~~"

Section 2. Section 8 of Chapter 464 of the 1993 Session Laws reads as rewritten:

"Sec. 8. Sections 1, 2, 3.1, 4, 5, 6, 7, and 8 of this act become effective October 1, 1993. Section 3 of this act becomes effective and expires as provided in subsection (b) of that section. ~~Sections 2 and 3.1 of this act expire on June 30, 1999.~~"

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:05 p.m. on the 19th day of June, 1997.

AN ACT TO ELIMINATE THE NEED TO OBTAIN PRIOR APPROVAL FROM THE WILDLIFE RESOURCES COMMISSION TO RAISE YELLOW PERCH COMMERCIALY IN SOME AREAS OF THE STATE AND TO ALLOW ALLIGATORS TO BE RAISED COMMERCIALY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-761(c) reads as rewritten:

"(c) Exceptions for Species Not Listed. -- The following fish species that are not listed in subsection (b) of this section may be produced and sold as if they were listed in that subsection with the following restrictions:

- (1) Hybrid striped bass, striped bass. -- The hybrid striped bass shall be subject to rules adopted by the Board of Agriculture in all river basins of the State except for the Neuse, Roanoke, and Tar/Pamlico River basins. In these basins production, Production, propagation, and holding facilities in the Neuse, Roanoke, or Tar/Pamlico River basins for the hybrid striped bass shall comply with additional escapement prevention measures as prescribed by the Wildlife Resources Commission.
- (2) Yellow perch. -- A letter of approval from the Wildlife Resources Commission is required before the yellow perch, perca flavescens, may be raised at a facility located west of Interstate Highway 77."

Section 2. Article 63 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-763.1. Propagation and production of American alligators.

(a) License Required. -- A person who intends to raise American alligators commercially must first obtain an Aquaculture Propagation and Production Facility License from the Department. The Board of Agriculture may regulate a facility that raises American alligators to the same extent that it can regulate any other facility licensed under this Article.

(b) Requirements. -- A facility that raises American alligators commercially must comply with all of the following requirements:

- (1) Before a facility begins operation, it must prepare and implement a confinement plan. After a facility begins operation, it must adhere to the confinement plan. A confinement plan must comply with guidelines developed and adopted by the Wildlife Resources Commission. The Department may inspect a facility to determine if the facility is complying with the confinement plan. As used in this subdivision, 'confinement' includes production within a building or similar structure and a perimeter fence.
- (2) A facility can possess only hatchlings that have been permanently tagged and have an export permit from their state of origin. The facility must keep records of all hatchlings it receives and must make these records available for inspection by the Wildlife Resources Commission and the Department upon request.

- (3) If the facility uses swine, poultry, or other livestock for feed, it must have a disease management plan that has been approved by the State Veterinarian, and it must comply with the plan.
- (4) The activities of the facility must comply with the Endangered Species Act and the Convention on International Trade in Endangered Species. The Department is the State agency responsible for the administration of this program for farm-raised alligators.

(c) Sanctions. -- The operator of a facility that possesses an untagged or undocumented alligator commits a Class H felony if the operator knows the alligator is untagged or undocumented. Conviction of an operator of a facility under this section revokes the license of the facility for five years beginning on the date of the conviction. An operator convicted under this section may not be the operator of any other facility required to be licensed under this Article for five years beginning on the date of the conviction."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:06 p.m. on the 19th day of June, 1997.

S.B. 855

CHAPTER 199

AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE ELECTRONIC ACCESS TO COURT INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-109 reads as rewritten:

"§ 7A-109. *Record-keeping procedures.*

(a) Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. The rules prescribed by the Director shall be designed to accomplish the following purposes:

- (1) To provide an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association;
- (2) To provide a record during the pendency of a case that allows for the efficient handling of the matter by the court from its initiation to conclusion and also affords information as to the progress of the case;
- (3) To provide security against the loss or destruction of original documents during their useful life and a permanent record for historical uses;

- (4) To provide a system of indexing that will afford adequate access to all records maintained by the clerk;
 - (5) To provide, to the extent possible, for the maintenance of records affecting the same action or proceeding in one rather than several units; and
 - (6) To provide a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them.
- (b) The rules shall provide for indexing according to the minimum criteria set out below:

- (1) Civil actions -- the names of all parties;
- (2) Special proceedings -- the names of all parties;
- (3) Administration of estates -- the name of the estate and in the case of testacy the name of each devisee;
- (4) Criminal actions -- the names of all defendants;
- (5) Juvenile actions -- the names of all juveniles;
- (6) Judgments, liens, lis pendens, etc. -- the names of all parties against whom a lien has been created by the docketing of a judgment, notice of lien, transcript, certificate, or similar document and the names of all parties in those cases in which a notice of lis pendens has been filed with the clerk and abstracted on the judgment docket.

(c) The rules shall require that all documents received for docketing shall be immediately indexed either on a permanent or temporary index. The rules may prescribe any technological process deemed appropriate for the economical and efficient indexing, storage and retrieval of information.

(d) In order to facilitate public access to court records, except where public access is prohibited by law, the Director may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to provide remote electronic access to the records by the public."

Section 2. If any contracts entered into under G.S. 7A-109(d) are in effect during any calendar year, the Director of the Administrative Office of the Courts shall submit to the Joint Legislative Commission on Governmental Operations not later than February 1 of the following year a report on all those contracts.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:07 p.m. on the 19th day of June, 1997.

S.B. 953

CHAPTER 200

AN ACT TO EXTEND THE TIME CORPORATIONS MAY APPLY FOR
REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 539 of the 1995 Session Laws, as amended by Section 15.1(b) of Chapter 17 of the Session Laws of the 1996 Second Extra Session, reads as rewritten:

"Sec. 7. Effective ~~July 1, 1997~~, July 1, 1998, G.S. 55-14-22(a), as amended by Section 6 of this act, reads as rewritten:

'(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated.
- (3) Reserved.
- (4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. Section 38(b) of Chapter 539 of the 1995 Session Laws, as amended by Section 15.1(c) of Chapter 17 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"(b) Section 7 of this act becomes effective ~~July 1, 1997~~, July 1, 1998, and applies to applications for reinstatement on or after that date. Section 25 of this act becomes effective July 1, 1996, and applies to proceedings commenced on or after that date."

Section 3. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:07 p.m. on the 19th day of June, 1997.

H.B. 833

CHAPTER 201

AN ACT TO AMEND THE GENERAL STATUTES TO PROVIDE MUNICIPALITIES WITH ADDITIONAL OPTIONS FOR SERVICE OF PROCESS IN HOUSING CODE CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-445 reads as rewritten:

"§ 160A-445. *Service of complaints and orders.*

(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(a1) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an

affidavit to that effect, then the serving of the complaint or order upon the ~~unknown~~ owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

- (b) ~~(1) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.~~

- ~~(2) This subsection applies only to municipalities that have a population in excess of 300,000 by the last federal census."~~

Section 2. This act is effective when it becomes law and applies to complaints or orders served on or after that date.

In the General Assembly read three times and ratified this the 11th day of June, 1997.

Became law upon approval of the Governor at 5:10 p.m. on the 19th day of June, 1997.

S.B. 892

CHAPTER 202

AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of this Article, there shall be no right of dissent in favor of holders of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or (ii) held by at least 2,000 record shareholders, unless in either case:

- (1) The articles of incorporation of the corporation issuing the shares provide otherwise;

- (2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

- a. Cash;
- b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or held of record by at least 2,000 record shareholders; or
- c. A combination of cash and shares as set forth in subdivisions a. and b. of this subdivision."

Section 2. G.S. 55-13-25 reads as rewritten:

"§ 55-13-25. Offer of payment. Payment.

(a) As soon as the proposed corporate action is taken, or ~~upon~~ within 30 days after receipt of a payment demand, the corporation shall ~~offer to pay~~ each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of payment, ~~and shall pay this amount to each dissenter who agrees in writing to accept it in full satisfaction of his demand.~~ payment.

(b) ~~The offer of payment must~~ shall be accompanied by:

- (1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of ~~offer of payment~~, an income statement for that year, a statement of cash flows for that year, and the latest available interim financial statements, if any;
- (2) ~~A statement of the corporation's estimate of~~ An explanation of how the corporation estimated the fair value of the shares;
- (3) An explanation of how the interest was calculated;
- (4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and
- (5) A copy of this Article."

Section 3. G.S. 55-13-28 reads as rewritten:

"§ 55-13-28. Procedure if shareholder dissatisfied with corporation's offer payment or failure to perform.

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of the amount in excess of the payment by the corporation under G.S. 55-13-25 ~~for his estimate or reject the corporation's offer under G.S. 55-13-25 and demand payment of the fair value of his shares and interest due, if:~~

- (1) The dissenter believes that the amount ~~offered~~ paid under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;
- (2) ~~The corporation fails to make payment to a dissenter who accepts the corporation's offer under G.S. 55-13-25 within 30 days after the dissenter's acceptance; G.S. 55-13-25; or~~

- (3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30 days after the corporation ~~offered~~ made payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment."

Section 4. G.S. 55-13-30 reads as rewritten:

"§ 55-13-30. *Court action.*

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the earlier of (i) the date of his payment demand is made under ~~G.S. 55-13-28~~ G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28 and petition the court to determine the fair value of the shares and accrued interest. ~~Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25. A dissenter who takes no action within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment.~~

~~(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.~~

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. However, in a proceeding by a dissenter in a public corporation, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 5. This act becomes effective October 1, 1997, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:12 p.m. on the 19th day of June, 1997.

S.B. 896

CHAPTER 203**AN ACT TO AMEND THE LAW GOVERNING THE PRACTICE OF LAW BY ATTORNEYS REPRESENTING CORPORATIONS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-5 reads as rewritten:

"§ 84-5. *Prohibition as to practice of law by corporation.*

(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

- (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
 - a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.
 - b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is

considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.

- c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) ~~When~~ Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

- a. Offering wills for probate.
- b. Preparing and publishing notice of administration to creditors.
- c. Handling formal court proceedings.
- d. Drafting legal papers or giving legal advice to spouses concerning dissent from their spouses' wills.
- e. Resolving questions of domicile and residence of a decedent.
- f. Handling proceedings involving year's allowances of widows and children.
- g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
- h. Drafting instruments releasing deeds of trust.
- i. Drafting assignments of rent.
- j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
- k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
 - 1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
 - 2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
 - 3. Handling petitions to the tax court.
- l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
- m. In connection with the administration of an estate or trust:
 - 1. Making application for letters testamentary or letters of administration.
 - 2. Abstracting or passing upon title to property.
 - 3. Handling litigation relating to claims by or against the estate or trust.
 - 4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

(3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

- a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
- b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.
- c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.
- d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing.

(b) Nothing in this section shall prohibit an attorney retained by a corporation, whether or not the attorney is also a salaried employee of the corporation, from representing the corporation or an affiliate, or from representing an officer, director, or employee of the corporation or an affiliate in any matter arising in connection with the course and scope of the employment of the officer, director, or employee. Notwithstanding the provisions of this subsection, the attorney providing such representation shall be governed by and subject to all of the Rules of Professional Conduct of the North Carolina State Bar to the same extent as all other attorneys licensed by this State."

Section 2. This act becomes effective October 1, 1997, and applies to acts from which claims, demands, or actions arise on or after that date.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:13 p.m. on the 19th day of June, 1997.

AN ACT TO REQUIRE LOCAL BOARDS TO ADMIT OTHERWISE
ELIGIBLE CHILDREN TO KINDERGARTEN AFTER THE FIRST
MONTH OF SCHOOL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-364 reads as rewritten:

"§ 115C-364. *Admission requirements.*

~~A child, to be entitled to initial entry in the public schools, must have passed the fifth anniversary of his/her birth on or before October 16 of the year in which the child is presented for enrollment, and must be presented for enrollment during the first month of the school year.~~ (a) A child who is presented for enrollment at any time during the first 120 days of a school year is entitled to initial entry into the public schools if:

- (1) The child reaches or reached the age of 5 on or before October 16 of that school year; or
- (2) The child did not reach the age of 5 on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before the child moved to and became a resident of North Carolina.

(b) A local board may allow a child who is presented for enrollment at any time after the first 120 days of a school year to be eligible for initial entry into the public schools if:

- (1) The child reached the age of 5 on or before October 16 of that school year; or
- (2) The child did not reach the age of 5 on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before the child moved to and became a resident of North Carolina.

(c) The initial point of entry into the public school system shall be at the kindergarten level: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the fifth anniversary of his birth before October 16. level. If the principal of a school finds as fact subsequent to initial entry that a child, by reason of maturity can be more appropriately served in the first grade rather than in kindergarten, the principal may act under the provisions of G.S. 115C-288 to implement this educational decision without regard to chronological age. The principal of any public school ~~shall have the authority to may~~ require the parents parent or guardian of any child presented for admission for the first time to such that school to furnish a certified copy of the child's birth certificate of such child, certificate, which shall be furnished by the register of deeds of the county having on file the record of the birth of such the child, or other satisfactory evidence of date of birth."

Section 2. G.S. 115C-81(f) reads as rewritten:

"(f) Establishment and Maintenance of Kindergartens. --

- (1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in this subsection.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

- (2) Any child who ~~has passed the fifth anniversary of his birth on or before October 16 of the year in which he enrolls~~ meets the requirements of G.S. 115C-364 shall be eligible for enrollment in kindergarten. Any child who is enrolled in kindergarten and not withdrawn by his the child's parent or guardian shall attend kindergarten.
- (3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:14 p.m. on the 19th day of June, 1997.

S.B. 1064

CHAPTER 205

AN ACT TO ALLOW A TAXPAYER WHO PREVAILS IN A PROPERTY TAX APPEAL TO RECEIVE INTEREST ON ANY OVERPAYMENT OF TAX AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY VARIOUS PROPERTY TAX ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-290(b) is amended by adding a new subdivision to read:

"(4) Interest on Overpayments. -- When an order of the Property Tax Commission reduces the valuation of property or removes the property from the tax lists and, based on the order, the taxpayer has paid more tax than is due on the property, the taxpayer is entitled to receive interest on the overpayment in accordance with this subdivision. An overpayment of tax bears interest at the rate set under G.S. 105-241.1(i) from the date the interest begins to accrue until a refund is paid. Interest accrues from the later of the date the tax was paid and the date the tax would have been considered delinquent under G.S. 105-360. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed."

Section 2. The Legislative Research Commission may study the methods used by counties to develop the schedules of value for a general reappraisal of real property, the appeal process for appeals of the value or listing of property, and the octennial revaluation schedule. The Commission may assign these topics to a study committee established to study various tax issues or may create a separate study committee to study these topics. In conducting the study, the Commission may determine whether the procedures used in developing schedules of value produce unrealistic values on nonresidential real property, whether representatives of the Department of Revenue should be given more authority in resolving taxpayer appeals, and whether the Property Tax Commission should be replaced with a State Tax Court. The Commission may make an interim report of its findings to the 1998 Regular Session of the 1997 General Assembly and may make a final report to the 1999 General Assembly.

Section 3. This act becomes effective July 1, 1997. Section 1 of this act applies to appeals made to the Property Tax Commission on or after the effective date of this act.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:15 p.m. on the 19th day of June, 1997.

H.B. 194

CHAPTER 206

AN ACT TO ESTABLISH AN ACCOUNT WITHIN THE CLEAN WATER REVOLVING LOAN AND GRANT FUND SO THAT FUNDS MADE AVAILABLE UNDER THE FEDERAL SAFE DRINKING WATER ACT AMENDMENTS OF 1996 MAY BE USED BY THE STATE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159G-5 is amended by adding a new subsection to read:

"(d) The Drinking Water Treatment Revolving Loan Fund is established as a special account within the Clean Water Revolving Loan and Grant Fund. This account shall be established and managed in accordance with the requirements of section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182; 110 Stat. 1662; 42 U.S.C. § 300j-12), to achieve the purposes and goals of the federal Safe Drinking Water Act Amendments of 1996. The funds in the Drinking Water Treatment Revolving Loan Fund may be used only for the purposes of providing revolving construction loans and other assistance as set forth in section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 and the regulations promulgated thereunder, including making grants to the extent permitted by these amendments or these regulations."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:16 p.m. on the 19th day of June, 1997.

H.B. 994

CHAPTER 207

AN ACT TO ALLOW PAY TELEPHONE PROVIDERS TO OBTAIN LINE ACCESS FROM COMPETITIVE LOCAL PROVIDERS OF TELEPHONE SERVICE AND TO ELIMINATE THE STATUTORY REQUIREMENT THAT LINE ACCESS RATES BE SET ON A MEASURED RATE BASIS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-110(c) reads as rewritten:

"(c) The Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments. This service may be in addition to or in competition with public telephone services offered by the certificated telephone company in the service area. The certificated local exchange telephone company in the service area where any new pay telephone service is proposed shall be the only provider of the access line from the pay instrument to the network, and the rates approved by the Commission for this access line shall be fully compensatory, reflect the business nature of the service, and shall be set on a measured usage rate basis where facilities are available or on a message rate basis otherwise. The access line from the pay instrument to the network may be obtained from the local exchange telephone company in the service area where the pay instrument is located, from any certificated competitive local provider, or any other provider authorized by the Commission. The Commission shall promulgate rules to implement the service authorized by this section, recognizing the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which

such services shall be regulated and to the extent necessary to protect the public interest regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network."

Section 2. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:20 p.m. on the 19th day of June, 1997.

H.B. 482

CHAPTER 208

AN ACT TO ALLOW ALL HANDICAPPED PERSONS TO USE A REGISTERED SIGNATURE FACSIMILE AS A MARK OF THEIR LEGAL SIGNATURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 22A-1 reads as rewritten:

"§ 22A-1. Use of a signature facsimile by a visually handicapped person.

A visually handicapped person, as defined in ~~G.S. 111-11~~ G.S. 168A-3(4), may use a registered signature facsimile as a proper mark of his the person's legal signature. An example of the signature facsimile shall be registered by the visually handicapped person with the clerk of the superior court in the county of his domicile, where the person lives. The registered signature facsimile may be revoked at any time in writing by the visually handicapped person."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:21 p.m. on the 19th day of June, 1997.

S.B. 153

CHAPTER 209

AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE FOR FIVE MORE YEARS, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as rewritten:

"Sec. 9. Section 4 of this act becomes effective January 1, 1994. Section 8 of this act becomes effective June 30, 1997. All other sections of this act become effective October 1, 1993. Sections Section 1 through 6 of this act expire June 30, 1997, expires June 30, 2002. Section 7 of this act expires June 30, 1995. Any funds remaining in the Scrap Tire Disposal Account

~~created by this act on June 30, 1997, shall be transferred to the Solid Waste Management Trust Fund.~~ The expiration of the additional tax imposed by Section 1 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arise during the time the additional tax is in effect. The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends on December 31, 1993."

Section 2. G.S. 130A-309.63 reads as rewritten:

"§ 130A-309.63. *Scrap Tire Disposal Account.*

(a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. -- The Department may use revenue in the Account only as authorized by this section. The Department may use up to ~~twenty-five percent (25%)~~ fifty percent (50%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, the effort made by a unit of local government to ensure that only tires generated in the normal course of business in this State are provided free disposal, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it. The Department may use up to forty percent (40%) of the revenue in the Account to make grants to encourage the use of processed scrap tire materials. These grants may be made to encourage the use of tire-derived fuel, crumb rubber, carbon black, or other components of tires for use in products such as fuel, tires, mats, auto parts, gaskets, flooring material, or other applications of processed tire materials. These grants shall be made in consultation with the Department of Commerce, the Division of Environmental Assistance and Pollution Prevention of the Department, and, where appropriate, the Department of Transportation. Grants to encourage the use of processed scrap tire materials shall not be used to process tires.

(c) Eligibility. -- A unit of local government is not eligible for a grant for scrap tire disposal unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government for scrap tire disposal may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose.

(e) Reports. -- The Department shall report annually on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall be submitted by 1 October of each year for the fiscal year ending the preceding 30 June. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the reporting period, and the amount of revenue used for grants and to clean up nuisance tire collection sites."

Section 3. Section 8 of Chapter 548 of the 1993 Session Laws is repealed.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law upon approval of the Governor at 5:22 p.m. on the 19th day of June, 1997.

H.B. 81

CHAPTER 210

AN ACT TO ESTABLISH A NINETY-DAY WAITING PERIOD FOR NEW RESIDENTS OF NORTH CAROLINA WHO NEED RESIDENCE IN ADULT CARE HOMES AND WHO NEED STATE-COUNTY SPECIAL ASSISTANCE FUNDS TO PAY FOR THEIR CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-41(b) reads as rewritten:

"(b) Assistance shall be granted to any person who:

- (1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled; and
- (2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and
- (3) ~~Is a resident of North Carolina.~~ Is one of the following:
 - a. A resident of North Carolina for at least 90 days immediately prior to receiving this assistance;
 - b. A person coming to North Carolina to join a close relative who has resided in North Carolina for at least 180 consecutive days immediately prior to the person's application. The close relative shall furnish verification of his or her residency to the local department of social services at the time the applicant applies for special assistance. As used in this sub-subdivision, a close relative is the person's parent, grandparent, brother, sister, spouse, or child; or
 - c. A person discharged from a State facility who was a patient in the facility as a result of an interstate mental health compact. As used in this sub-subdivision the term State facility is a facility listed under G.S. 122C-181."

Section 2. This act is effective when it becomes law and applies to residents making application for assistance on or after that date.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law upon approval of the Governor at 5:25 p.m. on the 19th day of June, 1997.

H.B. 277

CHAPTER 211

AN ACT PROHIBITING CERTAIN RELATIVES OF A CANDIDATE
FOR NOMINATION OR ELECTION FROM SERVING ON THE
COUNTY BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-30 reads as rewritten:

"§ 163-30. *County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.*

In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, or ~~brother~~ brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June 1985, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the

vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

'I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the County Board of Elections to the best of my knowledge and ability, according to law; so help me God.'

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chairman of the board, and shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those meetings."

Section 2. This act is effective when it becomes law and applies to appointments to county boards of elections for terms commencing on or after June 24, 1997.

In the General Assembly read three times and ratified this the 10th day of June, 1997.

Became law upon approval of the Governor at 5:30 p.m. on the 19th day of June, 1997.

H.B. 535

CHAPTER 212

AN ACT TO INCLUDE NONVESTED PENSION, RETIREMENT, AND OTHER DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding the following new section to read:

"§ 50-20.1. Pension and retirement benefits.

(a) The award of vested pension, retirement, or other deferred compensation benefits may be made payable:

- (1) As a lump sum by agreement;
- (2) Over a period of time in fixed amounts by agreement;
- (3) By appropriate domestic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or

- (4) By awarding a larger portion of other assets to the party not receiving the benefits and a smaller share of other assets to the party entitled to receive the benefits.

(b) The award of nonvested pension, retirement, or other deferred compensation benefits may be made payable:

- (1) As a lump sum by agreement;
(2) Over a period of time in fixed amounts by agreement; or
(3) By appropriate domestic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless the plan permits an earlier distribution.

(d) The award shall be determined using the proportion of time the marriage existed (up to the date of separation of the parties), simultaneously with the employment which earned the vested and nonvested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested and nonvested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service, or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation.

(e) No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested and nonvested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits award may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

(f) In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

(g) The court may require distribution of the award by means of a qualified domestic relations order, or as defined in section 414(p) of the

Internal Revenue Code of 1986, or by other appropriate order. To facilitate the calculating and payment of distributive awards, the administrator of the system, plan, or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

(h) This section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including vested and nonvested military pensions eligible under the federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court."

Section 2. G.S. 50-20(b)(1) reads as rewritten:

"(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, including and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence."

Section 3. G.S. 50-20(b)(2) reads as rewritten:

"(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. ~~The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property."~~

Section 4. G.S. 50-20(b)(3) reads as rewritten:

"(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall

not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

~~The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:~~

- ~~a. As a lump sum by agreement;~~
- ~~b. Over a period of time in fixed amounts by agreement;~~
- ~~c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or~~
- ~~d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.~~

~~Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).~~

~~In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the~~

~~recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.~~

~~The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.~~

~~The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court."~~

Section 5. G.S. 50-20(c) reads as rewritten:

"(c) There shall be an equal division by using net value of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. Factors the court shall consider under this subsection are as follows:

- (1) The income, property, and liabilities of each party at the time the division of property is to become effective;
- (2) Any obligation for support arising out of a prior marriage;
- (3) The duration of the marriage and the age and physical and mental health of both parties;
- (4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;
- (5) The expectation of ~~nonvested~~ pension, retirement, or other deferred compensation ~~rights, which is separate property; rights that are not marital property;~~
- (6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;
- (7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;
- (8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
- (9) The liquid or nonliquid character of all marital property;
- (10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic

desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;

- (11) The tax consequences to each party;
- (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
- (12) Any other factor which the court finds to be just and proper."

Section 6. This act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on and after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1997.

Became law upon approval of the Governor at 5:40 p.m. on the 19th day of June, 1997.

H.B. 15

CHAPTER 213

AN ACT TO CONFORM TO FEDERAL TAX TREATMENT OF INCOME RESTORED UNDER A CLAIM OF RIGHT.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-266.2. Refund of tax paid on substantial income later restored.

This section applies to a taxpayer who is subject to the alternative tax under § 1341(a)(5) of the Code for the current taxable year because the taxpayer restored an item of income that had been included in the taxpayer's gross income for an earlier taxable year. For the purpose of Article 4 of this Chapter, the taxpayer is considered to have made a payment of tax for the current taxable year on the later of the date the return for the current taxable year was filed or the date the return was due to be filed. The amount of this payment of tax is (i) the amount the taxpayer's tax under Article 4 for the earlier taxable year was increased because the item of income was included in gross income for that year minus (ii) the amount the taxpayer's tax under Article 4 for the current taxable year was decreased because the item was deductible for that year. To the extent this payment of tax creates an overpayment, the overpayment is refundable in accordance with G.S. 105-266."

Section 2. This act is effective for taxable years beginning on or after January 1, 1995.

In the General Assembly read three times and ratified this the 12th day of June, 1997.

Became law upon approval of the Governor at 5:45 p.m. on the 19th day of June, 1997.

AN ACT TO PROVIDE THAT CERTAIN PART-TIME
BACCALAUREATE DEGREE STUDENTS ARE ELIGIBLE FOR
NURSING SCHOLARSHIP LOANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.61(b) reads as rewritten:

"(b) The Nursing Scholars Program shall be used to provide the following:

- (1) A four-year scholarship loan in the amount of five thousand dollars (\$5,000) per year, per recipient, to North Carolina high school seniors or other persons interested in preparing to become a registered nurse through a baccalaureate degree program.
- (2) A two-year scholarship loan in the amount of three thousand dollars (\$3,000) per year, per recipient, to persons interested in preparing to be a registered nurse through an associate degree nursing program or a diploma nursing program.
- (3) A two-year scholarship loan in the amount of three thousand dollars (\$3,000) per year, per recipient, for two years of baccalaureate nursing study for college juniors or community college graduates interested in preparing to be a registered nurse.
- (4) A two-year scholarship loan of three thousand dollars (\$3,000) per year, per recipient, for two years of baccalaureate study in nursing for registered nurses who do not hold a baccalaureate degree in nursing.
- (5) A two-year scholarship loan of six thousand dollars (\$6,000) per year, per recipient, for two years of study leading to a master of science in nursing degree for people already holding a baccalaureate degree in nursing.

In addition to the scholarship loans awarded pursuant to subdivisions (1) through (5) of this subsection, the Commission may award pro rata scholarship loans to recipients enrolled at least half-time in study leading to a master of science in nursing degree who already hold a baccalaureate degree in ~~nursing~~, nursing and to recipients enrolled at least half-time in study leading to a baccalaureate degree in nursing who already are licensed as registered nurses. In awarding all scholarship loans, the Commission shall give priority to full-time students over part-time students. The State Education Assistance Authority shall adopt specific rules to regulate scholarship loans to part-time master of science in nursing ~~students~~, students and part-time baccalaureate degree students.

Within current funds available or with any additional funds provided by the General Assembly for this purpose, the Commission may set aside slots for scholarship loans prescribed by subdivisions (1) and (2) of this subsection to enable licensed practical nurses to become registered nurses. The State Education Assistance Authority shall adopt specific rules to regulate these scholarship loans."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:17 p.m. on the 19th day of June, 1997.

S.B. 162

CHAPTER 215

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS, TO PROVIDE THAT EXECUTION OF A RELINQUISHMENT DOES NOT TERMINATE THE DUTY OF SUPPORT, AND TO PERMIT ALL RELINQUISHMENTS TO BE RESCINDED BY MUTUAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"§ 48-2-305. *Petition for adoption; additional documents.*

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

- (1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;
- (2) Any required consent or relinquishment that has been executed;
- (3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;
- (4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;
- (5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;
- (6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement

or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;

- (7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;
- (8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and
- (9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"§ 48-2-403. *Notice of proceedings by clerk.*

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article."

Section 4. G.S. 48-2-502(b) reads as rewritten:

"(b) The report must be in writing and contain:

- (1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;
- (2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;
- (3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;
- (4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency;
- (5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

- (6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;
- (7) A recommendation concerning the granting of the petition; and
- (8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after receipt the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"§ 48-2-604. Denying petition to adopt a minor.

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies a petition to adopt a minor, the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the child minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the child, minor."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"§ 48-3-702. *Procedures for relinquishment.*

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this Part, ~~except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption~~, adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of the each adoption of a minor and any name change to the State Registrar if the minor adoptee was born in

this State, or State. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their equivalent if the minor was not born in this State, equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee. In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court.~~"

(d) G.S. 48-2-303 reads as rewritten:

"§ 48-2-303. *Caption of petition for adoption.*

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA

IN THE DISTRICT COURT

COUNTY

BEFORE THE CLERK

*(Full name of petitioning father)

and

PETITION FOR ADOPTION

*(Full name of petitioning mother)

and

FOR THE ADOPTION OF

~~*(Full name of adoptee as used in proceeding), by which the adoptee is to be known if the adoption is granted).~~"

(e) Subsection (a) of this section is effective on and after July 1, 1996. The remainder of this section becomes effective October 1, 1997. Subsections (b) and (c) apply to final orders entered on or after the effective date of this act.

Section 10. (a) G.S. 48-2-601(a) reads as rewritten:

"(a) If it appears to the court that ~~the petition~~ a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing."

(b) This section applies to petitions filed on or after the effective date.

Section 11. (a) G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

- (1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;

- (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;
- ~~(3) A parent for whose minor child a guardian has been appointed;~~
- (4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;
- (5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;
- (6) A deceased parent or the personal representative of a deceased parent's estate; or
- (7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice."

(b) G.S. 48-3-201(d) reads as rewritten:

~~"(d) An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes. An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 24B of Chapter 7A of the General Statutes."~~

(c) G.S. 48-4-102 reads as rewritten:

"§ 48-4-102. *Consent to adoption of stepchild.*

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

- (1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and
- (2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602."

(d) G.S. 48-3-602 reads as rewritten:

"§ 48-3-602. *Consent of incompetent parents.*

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent ~~and and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as to whether the adoption should proceed.~~ The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent."

(e) G.S. 48-1-101(8) reads as rewritten:

"(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by ~~G.S. 35A-1241;~~ G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction."

Section 12. (a) G.S. 48-2-501 reads as rewritten:

"§ 48-2-501. *Report to the court during proceeding for adoption of a minor.*

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

- (1) By the agency that placed the minor;
- (2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or
- (3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of: ~~(i) the petition to adopt; and (ii) the documents filed with it.~~

- (1) The petition to adopt; and
- (2) The documents filed with it.

(d) As an exception to this section, in any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report, but it is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead."

(b) G.S. 48-4-104 is repealed.

(c) This section becomes effective October 1, 1997.

Section 13. G.S. 130A-108 reads as rewritten:

"§ 130A-108. *Certificate of identification for child individual of foreign birth.*

In the case of an adopted child individual born in a foreign country and having legal settlement in this State, residing in this State at the time of

application, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the child-individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for children individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Section 14. Part 2 of Article 2 of Chapter 48 is amended by adding a new section to read:

"§ 48-2-206. Prebirth determination of right to consent.

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

'[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required.'

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

'To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it.'

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

"4. Before the earlier of the filing of the ~~petition~~, petition or the date of a hearing under G.S. 48-2-206, has acknowledged his paternity of the minor and

- I. Is obligated to support the minor under written agreement or by court order;
- II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or

after the term of pregnancy, or with the minor, or with both; or

- III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

- "(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. (a) G.S. 48-3-301(a)(1) reads as rewritten:

- "(1) Has been completed or updated within the 12 18 months immediately preceding the placement; and"
- (b) This section applies to placements made on or after the effective date of this act.

Section 19.1. (a) G.S. 48-3-704 reads as rewritten:

"§ 48-3-704. *Content of relinquishment; optional provisions.*

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs, completed."

(b) G.S. 48-3-705(c) reads as rewritten:

"(c) A relinquishment terminates:

- (1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the minor; minor.
- (2) The right to consent to the minor's adoption; and adoption.
- (3) The duty to support the minor."

(c) G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void if, if:

- (1) Before before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

Became law upon approval of the Governor at 5:11 p.m. on the 19th day of June, 1997.

S.B. 741

CHAPTER 216

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

- a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or
- b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.
- (2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars (\$50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.
- (3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.
- (4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 103

CHAPTER 217

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County shall be the 19 precincts that were in existence on January 1, 1995, provided that Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous with the 19 precincts that were in existence on January 1, 1995.

Section 2. This act shall become effective when Avery County reports in 1997 to the United States Bureau of the Census in the Boundary and Annexation Survey that the county has 19 townships which are coterminous

with the 19 precincts that were in existence on January 1, 1995. If at any subsequent time Avery County reports a different set of township lines to the United States Bureau of the Census in the Boundary and Annexation Survey, then at that time the provisions of Section 1 of this act shall expire. For purposes of this act, the Chair of the Avery County Board of Commissioners or the Avery County Manager is authorized to make reports for the county to the United States Bureau of the Census in the Boundary and Annexation Survey.

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 834

CHAPTER 218

AN ACT TO ALLOW THE CITIES OF LENOIR AND WILMINGTON TO USE WHEEL LOCKS ON ILLEGALLY PARKED VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 291 of the 1993 Session Laws, as amended by Chapter 381 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the Cities of ~~Durham, Raleigh, Winston Salem, and Greensboro~~ Durham, Greensboro, Lenoir, Raleigh, and Winston-Salem only. This act shall also apply to the City of Wilmington, but only as to the area in the central business district as defined in that City's zoning ordinance as of June 1, 1997."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law on the date it was ratified.

H.B. 698

CHAPTER 219

AN ACT LIMITING THE AUTHORITY OF THE TOWNS OF MOREHEAD CITY AND NEWPORT TO ANNEX NONCONTIGUOUS AREAS AND MODIFYING THE LAWS RELATING TO SATELLITE ANNEXATIONS WHICH APPLY TO MOORESVILLE.

The General Assembly of North Carolina enacts:

Section 1. The Towns of Morehead City and Newport may not annex noncontiguous areas as provided in Part 4 of Article 4A of Chapter 160A of the General Statutes if the area to be annexed is closer to the other Town's corporate limits than it is to the corporate limits of the Town desiring to annex the area. However, either Town may annex such an area if it lies within an area where the Town is exercising its extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

Section 2. Section 2 of Chapter 82 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the ~~Towns~~ Town of Apex and ~~Mooreville~~ and only with respect to annexation ordinances adopted on or before December 31, 2000. The authority this act grants to the Town of Apex does not apply to property in Chatham County; therefore, the Town of Apex may not annex property in Chatham County by satellite annexation if the area to be annexed, when added to the area within the satellite corporate limits of the Town of Apex, exceeds the limit set by general law in G.S. 160A-58.1(b)(5)."

Section 3. G.S. 160A-58.1(b)(5) does not apply to the Town of Mooreville.

Section 4. G.S. 160A-58.4, as amended by Chapter 289 of the 1991 Session Laws, reads as rewritten:

"§ 160A-58.4. *Extraterritorial powers.*

Satellite corporate limits for areas annexed prior to January 1, 1997, shall be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360, but not for purposes of abatement of public health nuisances pursuant to G.S. 160A-193. Satellite corporate limits for areas annexed on or after January 1, 1997, shall not be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall be the same within satellite corporate limits as within its primary corporate limits."

Section 5. Section 4 of this act applies only to the Town of Mooreville.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law on the date it was ratified.

H.B. 748

CHAPTER 220

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND TO ADD THE PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the Town of Matthews and is added to the corporate limits of the City of Charlotte:

The Waters property, Mecklenburg County tax parcels 227-362-97 and 227-362-98, and the Maynard property, Mecklenburg County tax parcel 227-141-08.

Section 2. This act shall have no effect upon the validity of any liens of the Town of Matthews for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected

or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Matthews.

Section 3. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law on the date it was ratified.

S.B. 272

CHAPTER 221

AN ACT TO ENACT THE EXCELLENT SCHOOLS ACT.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as "The Excellent Schools Act".

An outline of the provisions of the act follows this section. The outline shows the heading "CONTENTS/INDEX", and it lists by general category the descriptive captions for the various sections and groups of sections that make up the act. This outline is designed for reference only, and it in no way limits, defines, or prescribes the scope or application of the text of the act.

CONTENTS/INDEX

- I. PURPOSE OF THE EXCELLENT SCHOOLS ACT
 - Section 2.
- II. EFFORTS TO RAISE STUDENT PERFORMANCE STANDARDS
 - Section 3.
- III. RIGOROUS STANDARDS FOR ENTERING THE TEACHING PROFESSION
 - A. ENHANCED STANDARDS FOR TEACHER PREPARATION PROGRAMS
 - Section 4.
 - B. ENHANCED INITIAL CERTIFICATION REQUIREMENTS
 - Section 5.
 - C. REPORT ON ENHANCEMENT OF INITIAL CERTIFICATION STANDARDS
 - Section 6.
- IV. RIGOROUS STANDARDS FOR CONTINUING CERTIFICATION
 - A. AWARD OF CONTINUING CERTIFICATION DELAYED ONE YEAR
 - Section 7.
 - B. ENHANCED STANDARDS FOR CONTINUING CERTIFICATION
 - Section 8.
- V. RIGOROUS STANDARDS, EVALUATION, AND SUPPORT BEFORE CAREER STATUS IS CONSIDERED
 - A. SUPPORT AND MENTORS PROVIDED FOR ALL BEGINNING TEACHERS

Section 9.

- B. RIGOROUS AND MORE FREQUENT EVALUATIONS BY WELL-TRAINED EVALUATORS BEFORE CAREER STATUS IS CONSIDERED**

Section 10.

- C. CAREER STATUS DECISION TO BE MADE ONE YEAR AFTER CONTINUING CERTIFICATION AWARDED**

Section 11.

- VI. ADDITIONAL PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND TOUGHER STANDARDS FOR TEACHERS WITH CAREER STATUS**

- A. MEANINGFUL AND CONTINUED PROFESSIONAL DEVELOPMENT FOR TEACHERS**

Section 12.

- B. TENURE STREAMLINED TO PROVIDE A FAIR AND EFFICIENT PROCESS FOR REMOVING POOR TEACHERS FROM THE CLASSROOM**

Section 13.

- C. STUDIES ON MAKING RENEWAL OF TEACHER CERTIFICATES MORE RIGOROUS**

Section 14.

Section 15.

- VII. A PLAN TO ATTRACT AND RETAIN HIGH QUALITY TEACHERS -- HIGHER STARTING SALARY, ENHANCED LONGEVITY PAY, AND SIGNIFICANT BUMPS IN THE SALARY SCHEDULE UPON ACHIEVING CONTINUING CERTIFICATION AND CAREER STATUS**

Section 16.

- VIII. PAY FOR EXEMPLARY PERFORMANCE/SPECIAL ASSIGNMENTS**

- A. DEFINITION OF "MASTERS/ADVANCED COMPETENCIES" BY THE STATE BOARD OF EDUCATION**

Section 17.

- B. SALARY DIFFERENTIAL FOR "MASTERS/ADVANCED COMPETENCIES" AND FOR NBPTS CERTIFICATION**

Section 18.

- C. PARTICIPATION FEE AND PAID LEAVE FOR NBPTS PROGRAM**

Section 19.

- D. SCHOOL-BASED INCENTIVE AWARDS UNDER THE ABC'S PROGRAM**

Section 20.

- E. EXTRA PAY FOR MENTOR TEACHERS**

Section 21.

- F. EXTRA PAY FOR NEW TEACHER DEVELOPMENT**

Section 22.

- G. EXTRA PAY FOR PROFESSIONAL DEVELOPMENT**

Section 23.

- H. EXTRA PAY FOR EXTRA DAYS**

Section 24.

I. ADDITIONAL PAY FOR TEACHERS WITH ADDITIONAL RESPONSIBILITIES

Section 25.

IX. FUNDS FOR COMPUTER SYSTEMS

Section 26.

Section 27.

X. FUNDS FOR TEACHER SUPPLY AND DEMAND STUDY

Section 28.

XI. FUNDS FOR TRAINING AND COMPENSATING CASE MANAGERS

Section 29.

XII. FUNDS FOR DEVELOPING NEW EVALUATIONS

Section 30.

XIII. MISCELLANEOUS PROVISIONS**A. CAPTIONS ARE FOR REFERENCE ONLY AND DO NOT LIMIT TEXT**

Section 31.

B. NO APPROPRIATIONS REQUIRED BY ACT

Section 32.

C. EFFECTIVE DATES

Section 33.

I. PURPOSE OF THE EXCELLENT SCHOOLS ACT

Section 2. The purpose of The Excellent Schools Act is to improve student academic achievement and to reduce teacher attrition. To accomplish this purpose, it is the goal of the General Assembly to: (i) concentrate student learning in the core academic areas; (ii) improve teacher skills and teacher knowledge as those skills and knowledge relate to improved student academic achievement; and (iii) reward teachers for their improved skills and knowledge and for improved student academic achievement. It is also the goal of the General Assembly to annually review the implementation of the revised and more rigorous teacher preparation, professional development, and certification standards developed by the State Board of Education in compliance with this act. Clear and specific evidence demonstrating identifiable progress toward implementing more rigorous teacher professional standards must exist on an annual basis before the General Assembly may consider continued implementation of this act.

II. EFFORTS TO RAISE STUDENT PERFORMANCE STANDARDS

Section 3. (a) Part 3 of Article 8B of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"§ 115C-105.38A. Teacher competency assurance.

(a) General Knowledge Test. -- The State Board of Education shall require all certified staff members working in schools at the time the schools are identified as low-performing under this Article and to which the State Board has assigned an assistance team to demonstrate their general

knowledge by acquiring a passing score on a test designated by the State Board. The first general knowledge test shall be administered at the end of the 1997-98 school year. In subsequent years, the State Board shall determine when to administer the test for certified staff members in schools that are identified that year as low-performing and assigned an assistance team.

(b) Exemptions. -- The following certified staff members shall be exempt from taking the general knowledge test required under subsection (a) of this section.

- (1) Certified staff members who have:
 - a. Taken and passed the PRAXIS I exam as a condition of entry into a school of education; and
 - b. Taken and passed the PRAXIS II exam after July 1, 1996.
- (2) Certified staff members who have previously taken and passed the general knowledge test.

The exemptions under this subsection shall expire July 1, 2000, unless the State Board adopts a policy to continue them.

(c) Remediation. -- Certified staff members who do not acquire a passing score on the general knowledge test shall engage in a remediation plan based upon the deficiencies identified by the test. The remediation plan for deficiencies of individual certified staff members shall consist of up to a semester of university or community college training or coursework or both. The remediation shall be developed by the State Board of Education in consultation with the Board of Governors of The University of North Carolina. The State Board shall reimburse the institution providing the remediation any tuition and fees incurred under this section. If the remediation plan requires that the staff member engage in a full-time course of study or training, the staff member shall be considered on leave with pay.

(d) Retesting. -- Upon completion of the first remediation plan, the certified staff member shall take the general knowledge test a second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall provide a program of further remediation under subsection (c) of this section.

(e) Dismissal. -- Upon completion of the second remediation plan, the certified staff member shall take the general knowledge test a third time. If the certified staff member fails to acquire a passing score on the third test, the State Board shall begin dismissal proceedings under G.S. 115C-325(q)(2a).

(f) Other Actions Not Precluded. -- Nothing in this section shall be construed to restrict or postpone the following actions:

- (1) The dismissal of a principal under G.S. 115C-325(q)(1);
- (2) The dismissal of a teacher, assistant principal, director, or supervisor under G.S. 115C-325(q)(2);
- (3) The dismissal or demotion of a career employee for any of the grounds listed under G.S. 115C-325(e);
- (4) The nonrenewal of a school administrator's or probationary teacher's contract of employment; or
- (5) The decision to grant career status.

(g) Future Testing. -- The State Board shall develop a plan for testing and shall test all certified staff members in low-performing schools identified at the end of the 1999-2000 school year. When developing the plan, the State Board shall consider administering tests in the area of an individual's certification as well as the general knowledge test. The State Board shall report this plan to the Joint Legislative Education Oversight Committee prior to November 15, 1998."

(b) The State Board of Education shall develop a plan to provide competent certified substitute teachers to teach in the classrooms of teachers who are required to be absent because they are participating in a remediation plan. The plan shall include a provision to use State funds to pay the substitute teachers according to the teacher salary schedule.

(c) The State Board of Education shall develop and implement a plan to provide for the remediation of teachers who have been identified as lacking competence in their areas of certification or lacking adequate classroom management skills. The remediation may include coursework, assignment to the classroom of another teacher, or other appropriate measures. The State Board shall report to the Joint Legislative Education Oversight Committee prior to February 15, 1999, on its progress in implementing this section.

(d) The State Board of Education shall develop a comprehensive plan to address any deficiencies identified in certified staff in low-performing schools. The plan shall include a study of the demographics and characteristics of students and teachers in low-performing schools assigned assistance teams, including teacher experience and whether teachers are teaching within their area of certification. The State Board shall report this plan to the Joint Legislative Education Oversight Committee by November 15, 1998.

(e) The State Board of Education shall develop a plan to create rigorous student academic performance standards for kindergarten through eighth grade and student academic performance standards for courses in grades 9-12. The performance standards shall align, whenever possible, with the student academic performance standards developed for the National Assessment of Educational Progress (NAEP). The plan also shall include clear and understandable methods of reporting individual student academic performance to parents.

(f) The State Board of Education shall report on the implementation of subsections (a) and (b) of this section to the Joint Legislative Education Oversight Committee as part of its required reports on the implementation of the School-Based Management and Accountability Program. The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 1998, on the student performance standards and reports developed under subsection (e) of this section.

III. RIGOROUS STANDARDS FOR ENTERING THE TEACHING PROFESSION

A. ENHANCED STANDARDS FOR TEACHER PREPARATION PROGRAMS

Section 4. (a) G.S. 115C-296(b) reads as rewritten:

"(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the ~~State Board of Education shall submit to the General Assembly not later than November 1, 1994, a plan to promote this policy.~~ The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include courses demonstrated competencies in the identification and education of children with learning disabilities. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board and shall include the information required under the plan developed by the State Board."

(b) The State Board of Education shall develop a plan to provide a focused review of teacher education programs and the current process of accrediting these programs in order to ensure that the programs produce graduates that are well prepared to teach. The plan shall include the development and implementation of a school of education performance report for each teacher education program in North Carolina. The performance report shall include at least the following elements: (i) quality of students entering the schools of education, including the average grade point average and average score on preprofessional skills tests that assess reading, writing, math, and other competencies; (ii) graduation rates; (iii) time-to-graduation rates; (iv) average scores of graduates on professional and content area examinations for the purpose of certification; (v) percentage of graduates receiving initial certification; (vi) percentage of graduates hired as teachers; (vii) percentage of graduates remaining in teaching for four years; (viii) graduate satisfaction based on a common survey; and (ix) employer satisfaction based on a common survey. The performance reports shall

follow a common format. The performance reports shall be submitted annually for the 1998-99, 1999-2000, and 2000-2001 school years. The performance reports shall be submitted biannually thereafter to coincide with the Board of Governors' biannual report on institutional effectiveness. The State Board of Education shall develop a plan to be implemented beginning in the 1998-99 school year to reward and sanction approved teacher education programs and masters of education programs and to revoke approval of those programs based on the performance reports and other criteria established by the State Board of Education.

The State Board also shall develop and implement a plan for annual performance reports for all masters degree programs in education and school administration in North Carolina. To the extent it is appropriate, the performance report shall include similar indicators to those developed for the performance report for teacher education programs. The performance reports shall follow a common format.

Both plans for performance reports also shall include a method to provide the annual performance reports to the Board of Governors of The University of North Carolina, the State Board of Education, and the boards of trustees of the independent colleges. The State Board of Education shall review the schools of education performance reports and the performance reports for masters degree programs in education and school administration each year the performance reports are submitted.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by February 15, 1998, on the plans for schools of education performance reports and performance reports for masters degree programs in education and school administration developed under this subsection.

(c) The State Board of Education, in coordination with the Board of Governors of The University of North Carolina and independent colleges and universities that offer teacher education programs, shall conduct a comprehensive teacher supply and demand study. The study shall examine predicted trends over the course of the next decade and include information regarding the effect of teacher attrition rates on supply and demand. The study shall include information on characteristics of new teachers hired with teaching experience in other states and information regarding graduates of North Carolina schools of education who have not received certification. The survey also shall include school unit analysis and Southern Regional Education Board comparative analysis where appropriate. The State Board of Education shall report the results of the supply and demand study to the Joint Legislative Education Oversight Committee by November 15, 1998.

(d) The State Board of Education, in coordination with the Board of Governors of The University of North Carolina, and independent colleges and universities that offer masters degree programs in school administration shall conduct a comprehensive school administrator supply and demand study. The study shall examine retirement and attrition rates and the sources of the supply of new school administrators. The study also shall include school unit analysis and the characteristics, including quality, of individuals currently certified but not employed as school administrators. The study also shall include recommendations regarding continued data

collection and periodic reporting of teacher and school administrator supply and demand trends. The State Board of Education shall report the results of the supply and demand study to the Joint Legislative Education Oversight Committee by November 15, 1998. The State Board of Education and the Board of Governors of The University of North Carolina may combine this supply and demand study with the study required under G.S. 116-74.21(c).

(c) By March 15, 1998, the Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee on the efforts to improve teacher preparation through implementation of a second major requirement. The report shall include recommendations to strengthen the requirement and provide greater consistency for second majors throughout the system.

B. ENHANCED INITIAL CERTIFICATION REQUIREMENTS

Section 5. G.S. 115C-296(a) reads as rewritten:

"(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial ~~certificate or bachelors degree certificate or graduate degree~~ certificate to demonstrate his the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972: Provided, further, that the State Board of Education shall not decrease the certification standards for physical education teachers or health education teachers below the standards in effect on June 1, 1988. purpose. The State Board of Education shall make the standard initial certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach."

C. REPORT ON ENHANCEMENT OF INITIAL CERTIFICATION STANDARDS

Section 6. (a) The State Board of Education shall review the admission standards for teacher education programs and the initial certification requirements that were adopted by the Board on July 6, 1994. The State Board shall report to the Joint Legislative Education Oversight Committee by March 15, 1998, on the results of the review. The State Board may consolidate the report required under this subsection with the report on continuing certification required under Section 8 of this act and the report on renewal of teacher certificates required under Section 14 of this act.

(b) By March 15, 1999, the State Board shall implement the July 6, 1994, admission standards for teacher education programs and initial

certification requirements to the extent the State Board determines those standards and requirements are valid and consistent with the State goal of requiring rigorous professional requirements.

IV. RIGOROUS STANDARDS FOR CONTINUING CERTIFICATION

A. AWARD OF CONTINUING CERTIFICATION DELAYED ONE YEAR

Section 7. (a) G.S. 115C-296(b), as rewritten by Section 4(a) of this act, reads as rewritten:

"(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years thereafter.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include demonstrated competencies in the identification and education of children with learning disabilities. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board.

(b) This section applies to teachers who have not received continuing certification prior to January 1, 1998.

B. ENHANCED STANDARDS FOR CONTINUING CERTIFICATION

Section 8. The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement. The State Board shall report to the Joint Legislative Education Oversight Committee by March 15, 1998, on the results of this evaluation. The State Board may consolidate the report required under this section with the report on initial certification required under Section 6 of this act and the report on renewal of teacher certificates required under Section 14 of this act. The State Board of Education shall adopt new standards for continuing certification by May 15, 1998.

V. RIGOROUS STANDARDS, EVALUATION, AND SUPPORT BEFORE CAREER STATUS IS CONSIDERED**A. SUPPORT AND MENTORS PROVIDED FOR ALL BEGINNING TEACHERS**

Section 9. The State Board of Education shall develop a mentor program to provide ongoing support for teachers entering the profession. In developing the mentor program, the State Board shall conduct a comprehensive study of the needs of new teachers and how those needs can be met through an orientation and mentor support program. For the purpose of helping local boards to support new teachers, the State Board shall develop and distribute guidelines which address optimum teaching load, extracurricular duties, student assignment, and other working condition considerations. The State Board also shall develop and coordinate a mentor teacher training program. The State Board shall develop criteria for selecting excellent, experienced, and qualified teachers to be participants in the mentor teacher training program. The State Board shall report to the Joint Legislative Education Oversight Committee prior to February 15, 1998, on its progress in implementing this section.

B. RIGOROUS AND MORE FREQUENT EVALUATIONS BY WELL-TRAINED EVALUATORS BEFORE CAREER STATUS IS CONSIDERED

Section 10. (a) G.S. 115C-326(a) reads as rewritten:

"(a) The State Board of Education, in consultation with local boards of education, shall revise and develop uniform performance standards and criteria to be used in evaluating professional public school ~~employees. It~~ employees, including school administrators. These standards and criteria shall include improving student achievement and employee skills and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in carrying out the responsibility of providing for school safety and enforcing student discipline. The Board shall develop rules to recommend the use of these standards and criteria in the employee evaluation process.

The performance standards and criteria may be modified ~~in~~ at the discretion of the Board.

The State Board of Education, in collaboration with the Board of Governors of The University of North Carolina, shall develop training programs for practicing school administrators to improve their evaluation of professional public school employees based on the employee's skills and knowledge and student achievement. These programs shall include evaluative methods to determine whether an employee's performance has improved student learning, as well as the appropriate process for professional improvement, contract nonrenewal, and dismissal of school personnel whose performance is inadequate. The Board of Governors of The University of North Carolina shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions.

Local boards of education shall adopt rules to provide for the evaluation of all professional employees defined as teachers in G.S. 115C-325(a)(6). All teachers who have not attained career status shall be observed at least three times annually by a qualified school administrator or a designee and at least once annually by a teacher, and shall be evaluated at least once annually by a qualified school administrator. All other teachers shall be evaluated annually unless a local board adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. Local boards may also adopt rules requiring the annual evaluation of other school employees not specifically covered in this section. Local boards may develop and use alternative evaluation approaches for teachers provided the evaluations are properly validated. Local boards that do not develop alternative evaluations shall utilize the performance standards and criteria adopted by the State Board of Education, but are not limited to those standards and criteria."

(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 1998, on the development of programs to train administrators to improve the evaluation of professional public school employees.

(c) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 1998, on the revision and development of uniform performance standards and criteria to be used in evaluating professional public school employees including school administrators. The State Board of Education shall adopt new performance standards and criteria by May 15, 1998.

(d) The State Board of Education shall develop guidelines for evaluating superintendents. The guidelines shall include criteria for evaluating superintendent effectiveness in providing safe schools and enforcing student discipline. The State Board of Education shall report to the Joint Legislative Education Oversight Committee by April 15, 1998, on the development of the guidelines. The State Board of Education shall adopt guidelines for evaluating superintendents by July 15, 1998.

C. CAREER STATUS DECISION TO BE MADE ONE YEAR AFTER CONTINUING CERTIFICATION AWARDED

Section 11. (a) G.S. 115C-325(c) reads as rewritten:

"(c) (1) Election of a Teacher to Career Status. -- Except as otherwise provided in subdivision (3) of this subsection, when a teacher ~~will have~~ has been employed by a North Carolina public school system for ~~three~~ four consecutive years, the board, near the end of the ~~third~~ fourth year, shall vote upon ~~his employment for the next school year, whether to grant the teacher career status.~~ The board shall give him the teacher written notice of that decision by June 1 ~~of his third year of employment.~~ 15. If a majority of the board votes to ~~reemploy the teacher,~~ grant career status to the teacher, and if it has notified him the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate his the teacher's employment. If a majority of the board votes against ~~reemploying the teacher, granting career status,~~ he the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status but ~~reemploys him for the next year, he automatically becomes a career teacher on the first day of the fourth year of employment.~~ status:

- a. It shall not reemploy the teacher for a fifth consecutive year;
- b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and
- c. The teacher shall be entitled to an additional month's pay for every 30 days after June 16 that the board fails to vote upon the issue of granting career status.

A year, for purposes of computing time as a probationary teacher, shall be not less than 120 workdays performed as a full-time, permanent teacher in a normal school year.

- (2) Employment of a Career Teacher. -- A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than two years. ~~years, and may, at the option of the board, be employed immediately as a career teacher. In any event, if the teacher is reemployed for a third consecutive school year, he shall automatically become a career teacher. A teacher with career status who resigns and within five years is reemployed by the same local school administrative unit need not serve another probationary period of more than one school year and may, at the option of the board, be reemployed as a career teacher. In any event, if he is reemployed for a second consecutive school year, he shall automatically become a career teacher.~~ The board may grant career status immediately upon employing the teacher, or after the first or second year of employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current

term. If after two consecutive years of employment, the board fails to vote on the issue of granting career status:

- a. It shall not reemploy the teacher for a third consecutive year;
- b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and
- c. The teacher shall be entitled to one additional month's pay for every 30 days beyond June 16 that the board fails to vote upon the issue of granting career status.

(2a) Notice of Teachers Eligible to Achieve Career Status. -- At least 30 days prior to any board action granting career status, the superintendent shall submit to the board a list of the names of all teachers who are eligible to achieve career status. Notwithstanding any other provision of law, the list shall be a public record under Chapter 132 of the General Statutes.

(3) Ineligible for Career Status. -- No employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is working in a principal or supervisor position who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education.

(4) Leave of Absence. -- A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave."

(b) This section applies to teachers, as defined in G.S. 115C-325(a)(6), who have not attained career status pursuant to G.S. 115C-325(c) prior to July 1, 1998.

VI. ADDITIONAL PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND TOUGHER STANDARDS FOR TEACHERS WITH CAREER STATUS

A. MEANINGFUL AND CONTINUED PROFESSIONAL DEVELOPMENT FOR TEACHERS

Section 12. (a) G.S. 115C-12 is amended by adding a new subdivision to read:

"(26) Duty to Monitor and Make Recommendations Regarding Professional Development Programs. -- The State Board of Education, in collaboration with the Board of Governors of The University of North Carolina, shall identify and make recommendations regarding meaningful professional development programs for professional public school

employees. The programs shall be aligned with State education goals and directed toward improving student academic achievement. The State Board shall annually evaluate and, after consultation with the Board of Governors, make recommendations regarding professional development programs based upon reports submitted by the Board of Governors under G.S. 116-11(12a)."

(b) G.S. 116-11 is amended by adding a new subdivision to read:

"(12a) The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors."

(c) The State Board of Education shall report to the Board of Governors of The University of North Carolina by January 15, 1998, on its initial recommendations for implementation of subsection (a) of this section.

(d) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by April 1, 1998, on a plan to coordinate the subject matter and consolidate components of the professional development programs for professional public school employees. This report may include recommendations for statutory or other organizational changes.

B. TENURE STREAMLINED TO PROVIDE A FAIR AND EFFICIENT PROCESS FOR REMOVING POOR TEACHERS FROM THE CLASSROOM

Section 13. (a) G.S. 115C-325, as rewritten by Section 11(a) of this act, reads as rewritten:

"§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. -- As used in this section unless the context requires otherwise:

(1a) 'Career employee' as used in this section means:

- a. An employee who has obtained career status with that local board as a teacher as provided in G.S. 115C-325(c);
- b. An employee who has obtained career status with that local board in an administrative position as provided in G.S. 115C-325(d)(2);
- c. A probationary teacher during the term of the contract as provided in G.S. 115C-325(m); and
- d. A school administrator during the term of a school administrator contract as provided in G.S. 115C-287.1(c).

- (1b) 'Career school administrator' means a school administrator who has obtained career status in an administrative position as provided in G.S. 115C-325(d)(2).
- (1) 'Career teacher' means a teacher who has obtained career status as provided in G.S. 115C-325(c).
- (1d) 'Case manager' means a person selected under G.S. 115C-325(h)(7).
- (2) 'Committee' means the Professional Review Committee created under G.S. 115C-325(g).
- (3) 'Day' means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.
- (4) 'Demote' means to reduce the ~~compensation~~ salary of a person who is classified or paid by the State Board of Education as a classroom teacher, teacher or as a school administrator, ~~or to transfer him to a new position carrying a lower salary, or to suspend him without pay to a maximum of 60 days; provided, however, that a suspension without pay pursuant to the provisions of G.S. 115C-325(f) shall not be considered a demotion. The word 'demote' does not include a reduction in compensation that results from the elimination of a special duty, such as the duty of an athletic coach, assistant principal, or a choral director.~~ include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.
- (4a) 'Disciplinary suspension' means a final decision to suspend a teacher or school administrator without pay for no more than 60 days under G.S. 115C-325(f)(2).
- (5) 'Probationary teacher' means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to supervise teaching.
- (6) 'Teacher' means a person who holds at least a current, not provisional or expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.
- (7) 'School administrator' means a principal, assistant principal, supervisor, or director whose major function includes the direct or indirect supervision of teaching or any other part of the instructional program as provided in G.S. 115C-287.1(a)(3).

- (8) 'Year' for purposes of computing time as a probationary teacher shall be not less than 120 workdays performed as a probationary teacher in a full-time permanent position in a school year.

(b) **Personnel Files.** -- The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher, except the data may be used to substantiate G.S. 115C-325(e)(1)g. or G.S. 115C-325(e)(1)o. as grounds for dismissal or demotion.

- (c) (1) **Election of a Teacher to Career Status.** -- Except as otherwise provided in subdivision (3) of this subsection, when a teacher has been employed by a North Carolina public school system for four consecutive years, the board, near the end of the fourth year, shall vote upon whether to grant the teacher career status. The board shall give the teacher written notice of that decision by June 15. If a majority of the board votes to grant career status to the teacher, and if it has notified the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate the teacher's employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status:
- a. It shall not reemploy the teacher for a fifth consecutive year;
 - b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and
 - c. The teacher shall be entitled to an additional month's pay for every 30 days after June 16 that the board fails to vote upon the issue of granting career status.

~~A year, for purposes of computing time as a probationary teacher, shall be not less than 120 workdays performed as a full-time, permanent teacher in a normal school year.~~

- (2) Employment of a Career Teacher. -- A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than two years. The board may grant career status immediately upon employing the teacher, or after the first or second year of employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current term. If after two consecutive years of employment, the board fails to vote on the issue of granting career status:
 - a. It shall not reemploy the teacher for a third consecutive year;
 - b. As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and
 - c. The teacher shall be entitled to one additional month's pay for every 30 days beyond June 16 that the board fails to vote upon the issue of granting career status.
- (2a) Notice of Teachers Eligible to Achieve Career Status. -- At least 30 days prior to any board action granting career status, the superintendent shall submit to the board a list of the names of all teachers who are eligible to achieve career status. Notwithstanding any other provision of law, the list shall be a public record under Chapter 132 of the General Statutes.
- (3) Ineligible for Career Status. -- No employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status as a teacher if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is working in a principal or supervisor position employed as a school administrator who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education.
- (4) Leave of Absence. -- A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.
- (d) Career Teachers and Career School Administrators.
 - (1) A career teacher or career school administrator shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

- (2) a. The provisions of this subdivision do not apply to a person who is ineligible for career status as provided by G.S. 115C-325(c)(3).

b. ~~Whether or not he has previously attained career status as a teacher, a person who has performed the duties of a principal in the school system for three consecutive years or has performed the duties of a supervisor in the school system for three consecutive years shall not be transferred from that position to a lower paying administrative position or to a lower paying nonadministrative position without his consent except for the reasons given in G.S. 115C-325(e)(1) and in accordance with the provisions for the dismissal of a career teacher set out in this section. Transfer of a principal or a supervisor is not a transfer to a lower paying position if the principal's or supervisor's salary is maintained at the previous salary amount.~~

- c. Subject to G.S. 115C-287.1, when ~~When~~ a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as a full-time, permanent principal or supervisor in a contract year.

A principal or supervisor who has obtained career status in that position in any North Carolina public school system may be required by the board of education in another school system to serve an additional three-year probationary period in that position before being eligible for career status. However, he may, at the option of the board of education, be granted career status immediately or after serving a probationary period of one or two additional years. A principal or supervisor with career status who resigns and within five years is reemployed by the same school system

need not serve another probationary period in that position of more than two years and may, at the option of the board, be reemployed immediately as a career principal or supervisor or be given career status after only one year. In any event, if he is reemployed for a third consecutive year, he shall automatically become a career principal or supervisor.

(e) Grounds for Dismissal or Demotion of a Career ~~Teacher~~ Employee.

- (1) Grounds. -- No career ~~teacher employee~~ shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:
 - a. Inadequate performance.
 - b. Immorality.
 - c. Insubordination.
 - d. Neglect of duty.
 - e. Physical or mental incapacity.
 - f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
 - g. Conviction of a felony or a crime involving moral turpitude.
 - h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
 - i. Failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this State.
 - j. Failure to comply with such reasonable requirements as the board may prescribe.
 - k. Any cause which constitutes grounds for the revocation of ~~such the career teacher's teaching certificate, certificate or the career school administrator's administrator certificate.~~
 - l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
 - m. Failure to maintain his certificate in a current status.
 - n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
 - o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.
- (2) Reduction in Force. -- Before recommending to a board the dismissal or demotion of the career ~~teacher employee~~ pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career ~~teacher employee~~ by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified.

The notice shall include a statement to the effect that if the teacher career employee within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career teacher employee may file with the superintendent a written request for a hearing before the board within 10 days. If the teacher career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j) G.S. 115C-325(j3) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit ~~appointment of, and investigation and review by, a panel of the Professional Review Committee~~ a hearing by a case manager shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career teacher employee is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available teachers career employees to be maintained by the board. Career teachers employees whose names are placed on such a list shall have a priority on all positions in which they acquired career status and for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed teacher career employee a position for which he is certified and he refuses it, his name shall be removed from the priority list.

- (3) Inadequate Performance. -- In determining whether the professional performance of a career teacher employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher employee of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.
- (4) Three-Year Limitation on Basis of Dismissal or Demotion. -- Dismissal or demotion under subdivision (1) above, except ~~paragraph g~~ paragraphs g. and o. thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal or demotion is mailed to the teacher career employee. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above

when the charge of immorality is based upon a teacher's career employee's sexual misconduct toward or sexual harassment of students or staff.

- (f) (1) Suspension without Pay. -- If a superintendent believes that cause exists for dismissing a probationary or career teacher employee for any reason specified in G.S. 115C-325(e)(1)a. through 115C-325(e)(1)j. G.S. 115C-325(e)(1) and that immediate suspension of the teacher career employee is necessary, the superintendent may suspend him the career employee without pay. Before suspending a teacher career employee without pay, the superintendent shall meet with the teacher career employee and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal dismissal, demotion, or disciplinary suspension without pay exist, the teacher career employee shall be reinstated immediately and immediately, shall be paid for the period of suspension suspension, and all records of the suspension shall be removed from the career employee's personnel file.
- (2) Disciplinary Suspension Without Pay. -- A teacher career employee recommended for suspension without pay pursuant to G.S. 115C-325(a)(4) 115C-325(a)(4a) may request a hearing before the board. If the teacher requests a hearing before the board, the procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within 15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a suspension without pay pursuant to G.S. 115C-325(a)(4).
- a. Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. -- The procedures for a board hearing under G.S. 115C-325(j3) shall apply if any of the following circumstances exist:
1. The recommended disciplinary suspension without pay is for more than 10 days; or
 2. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled

substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's certificate, or providing false information.

- b. Board hearing for disciplinary suspensions of no more than 10 days. -- The procedures for a board hearing under G.S. 115C-325(j2) shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in G.S. 115C-325(f)(2)a.2.

(f1) Suspension with Pay. -- If a superintendent believes that cause may exist for dismissing or demoting a ~~probationary or career teacher employee~~ for any reasons specified in ~~G.S. 115C-325(e)(1)b through 115C-325(e)(1)i~~, ~~G.S. 115C-325(e)(1)~~, but that additional investigation of the facts is necessary and circumstances are such that the ~~teacher career employee~~ should be removed immediately from his duties, the superintendent may suspend the ~~teacher career employee~~ with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall immediately notify the board of education within two days of his action and shall notify the ~~career employee~~ within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the ~~teacher career employee~~ within the 90-day period, the ~~teacher career employee~~ shall be reinstated to his duties immediately and all records of the suspension with pay shall be removed from the ~~teacher's career employee's~~ personnel file at his ~~request~~. However, if the superintendent and the employee agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the career employee at any time during the period of the extension.

(f2) Procedure for Demotion of Career School Administrator. -- If a superintendent intends to recommend the demotion of a career school administrator, the superintendent shall give written notice to the career school administrator by certified mail or personal delivery and shall include in the notice the grounds upon which the superintendent believes the demotion is justified. The notice shall include a statement that if the career school administrator requests a hearing within 15 days after receipt of the notice, the administrator shall be entitled to have the grounds for the proposed demotion reviewed by the local board of education. If the career school administrator does not request a board hearing within 15 days, the superintendent may file the recommendation of demotion with the board. If, after considering the superintendent's recommendation and the evidence presented at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board may by resolution order the demotion. The procedures for a board hearing under G.S. 115C-325(j3) shall apply to all demotions of career school administrators.

(g) Professional Review Committee; Qualifications; Terms; Vacancy; Training.

- (1) There is hereby created a Professional Review Committee which shall consist of 132 citizens, 11 from each of the State's congressional districts, five of whom shall be lay persons and six

~~of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years. The initial terms of office of the persons appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1995. The Superintendent of Public Instruction, with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Committee. The person appointed to fill the vacancy shall serve for the unexpired portion of the term of the member of the Committee whom he is appointed to replace.~~

- ~~(2) The Superintendent of Public Instruction shall provide for the Committee such training as he considers necessary or desirable for the purpose of enabling the members of the Committee to perform the functions required of them.~~
- ~~(3) The compensation of committee members while serving as a member of a hearing panel shall be as for State boards and commissions pursuant to G.S. 138-5. The compensation shall be paid by the State Board of Education.~~
- (h) Procedure for Dismissal or Demotion of Career Teacher Employee.
 - (1)
 - a. A career teacher employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.
 - b. G.S. 115C-325(f2) shall apply to the demotion of a career school administrator.
 - (2) Before recommending to a board the dismissal or demotion of the career teacher employee, the superintendent shall give written notice to the career teacher employee by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal or demotion is justified. The superintendent also shall meet with the career employee and give him written notice of the charges against him, an explanation of the basis for the charges, and an opportunity to respond if the career employee has not done so under G.S. 115C-325(f)(1). The notice shall include a statement to the effect that if the teacher career employee within 15 14 days after the date of receipt of the notice requests a review, he shall be entitled to have the grounds for the proposed recommendations of the superintendent reviewed by a panel of the Committee case manager. A copy of G.S. 115C-325 and a current list of the members of the Professional Review Committee case managers shall also be sent to the career teacher employee. If the teacher career employee does not request a panel hearing with a case manager within the 15 14 days provided, the superintendent may submit his recommendation to the board.

- (3) Within the ~~15-day~~ 14-day period after receipt of the notice, the career ~~teacher employee~~ may file with the superintendent a written request for either (i) ~~a review of the~~ a hearing on the grounds for the superintendent's proposed recommendation by a panel of the Professional Review Committee case manager or (ii) a hearing within five days before the board on the superintendent's recommendation, within 10 days. If the ~~teacher career employee~~ requests an immediate hearing before the board, he forfeits his right to a hearing by ~~a panel of the Professional Review Committee.~~ A hearing conducted by the board pursuant to this subdivision shall be conducted pursuant to G.S. 115C-325(j) and (4) a case manager. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution ~~dismiss such teacher,~~ (i) reject the superintendent's recommendation or (ii) accept or modify the superintendent's recommendation and dismiss, demote, reinstate, or suspend the employee without pay. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a ~~panel of the Committee~~ the case manager is filed with the superintendent.
- (4) ~~If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within seven days from the time of receipt of such notice, shall designate a panel of five members of the Committee, at least two of whom shall be lay persons, who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.~~
- (5) If the career employee elects to request a hearing by a case manager, the career employee and superintendent shall each have the right to eliminate up to one-third of the names on the approved list of case managers. The career employee shall specify those case managers who are not acceptable in the career employee's request for a review of the superintendent's proposed recommendation under G.S. 115C-325(h)(3). The superintendent and career employee may jointly select a person to serve as case manager. The person need not be on the master list of case managers maintained by the Superintendent of Public Instruction.
- (6) If a career employee requests a review by a case manager, the superintendent shall notify the Superintendent of Public Instruction within two days' receipt of the request. The notice shall contain a list of the case managers the career employee and

the superintendent have eliminated from the master list or the name of a person, if any, jointly selected. Failure to exercise the right to eliminate names from the master list shall constitute a waiver of that right.

- (7) The Superintendent of Public Instruction shall select a case manager within three days of receiving notice from the superintendent. The Superintendent of Public Instruction shall designate the person jointly selected by the parties to serve as case manager provided the person agrees to serve as case manager and can meet the requirements for time frames for the hearing and report as provided in G.S. 115C-325(i)(1). If a case manager was not jointly selected or if the case manager is not available, the Superintendent of Public Instruction shall select a case manager from the master list. No person eliminated by the career employee or superintendent shall be designated case manager.

- (8) The superintendent and career employee shall provide each other with copies of all documents submitted to the Superintendent of Public Instruction or to the designated case manager.

(h1) Case Managers; Qualifications; Training; Compensation.

- (1) Each year the State Board of Education shall select and maintain a master list of no more than 42 qualified case managers.

- (2) Persons selected by the State Board as case managers shall be: (i) certified as a North Carolina Superior Court mediator; (ii) a member of the American Arbitration Association's roster of arbitrators and mediators; or (iii) have comparable certification in alternative dispute resolution. Case managers must complete a special training course approved by the State Board of Education.

- (3) The State Board of Education shall determine the compensation for a case manager. The State Board shall pay the case manager's compensation and reimbursement for expenses.

(i) Hearing by Panel of Professional Review Committee; Report; Action of Superintendent; Review by Board.

- (1) The career teacher and superintendent will each have the right to designate not more than 33 of the 132 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify to the superintendent those Committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subdivision (h)(4) above shall contain a list of those members of the Committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right.

- (2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct a hearing in accordance

- with G.S. 115C-325(j) for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its hearing and shall be empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.
- (3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.
- (4) When the panel has completed its hearing, it shall prepare a written report and send it to the superintendent and teacher. The report shall contain its findings as to whether or not the grounds for the recommendation are true and substantiated by a preponderance of the evidence, and a statement of the reasons for its findings. The panel shall complete its hearing and prepare the report within 20 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher: Provided, that such extension does not exceed 10 days.
- (5) Within five days after the superintendent receives the report of the panel, the superintendent shall decide whether or not to submit a written recommendation for dismissal to the board or to drop the charges against the teacher and shall notify the teacher, in writing, of the decision. Within five days after receiving the superintendent's notice of his intent to recommend the teacher's dismissal to the board, the teacher shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the teacher requests a hearing before the board, the superintendent shall submit his written recommendation to the board with a copy to the teacher within five days after receiving the teacher's request. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the Committee.
- (6) Within seven days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and notify the teacher by certified mail of the date, time and place of the hearing. The time specified shall not be less than seven nor more than 20 days after the board has notified the teacher. If the teacher did not request a hearing, the board may, by resolution, dismiss the teacher. If the teacher can show that his request for a hearing was postmarked within the time provided, his right to a hearing is not forfeited.

(1) Report of Case Manager; Superintendent's Recommendation.

- (1) The case manager shall complete the hearing held in accordance with G.S. 115C-325(j) and prepare the report within 10 days from the time of the designation. The case manager may extend the period of time by up to five additional days if the case manager informs the superintendent and the career employee that justice requires that a greater time be spent in connection with the investigation and the preparation of the report. Furthermore, the superintendent and the career employee may agree to an extension of more than five days.
- (2) The case manager shall make all necessary findings of fact, based upon the preponderance of the evidence, on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified. The case manager also shall make a recommendation as to whether the findings of fact substantiate the superintendent's grounds for dismissal. The case manager shall deliver copies of the report to the superintendent and the career employee.
- (3) Within two days after receiving the case manager's report, the superintendent shall decide whether to submit a written recommendation to the local board for dismissal, demotion, or disciplinary suspension without pay to the board or to drop the charges against the career employee. The superintendent shall notify the career employee, in writing, of the decision.
- (4) If the superintendent contends that the case manager's report fails to address a critical factual issue, the superintendent shall within three days receipt of the case manager's report, request in writing with a copy to the career employee that the case manager prepare a supplement to the report. The superintendent shall specify what critical factual issue the superintendent contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(j) Hearing Procedure by a Case Manager. -- The following provisions shall be applicable apply to any a hearing conducted pursuant to G.S. 115C-325(k) or (l) or to any hearing conducted by a board pursuant to G.S. 115C-325(h)(3) by the case manager.

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115C-325, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such case manager hearings.

- (3) At the hearing the teacher career employee and the superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.
- (4) Rules of evidence shall not apply to a hearing conducted ~~pursuant to this act and boards and panels of the Professional Review Committee~~ by a case manager and the case manager may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.
- (5) At least five days before the hearing, the superintendent shall provide to the teacher career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence ~~he the superintendent~~ intends to present. At least three days before the hearing, the teacher career employee shall provide to the superintendent a list of witnesses ~~the teacher career employee~~ intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence ~~he the career employee~~ intends to present. Additional witnesses or documentary evidence may not be presented except ~~upon consent of both parties or upon a majority vote of the board or panel, upon a finding by the case manager that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subdivision.~~
- (6) The case manager may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal.
- (7) The case manager shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.
- (8) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates a hearing before the board or to appeal the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings before the case manager.
- (j1) Board Determination.
 - (1) Within two days after receiving the superintendent's notice of intent to recommend the career employee's dismissal to the board, the career employee shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the career employee can show that the request for a hearing was postmarked within the time provided, the career employee shall not forfeit the right to a board hearing. Within two days after receiving the career employee's request for a board hearing, the superintendent shall

submit to the board the written recommendation and shall provide a copy to the career employee. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the case manager's report.

- (2) If the career employee contends that the case manager's report fails to address a critical factual issue the career employee shall, at the same time he notifies the superintendent of a request for a board hearing pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the superintendent that the case manager prepare a supplement to the case manager's report. The career employee shall specify the critical factual issue he contends the case manager failed to address. If the case manager determines that the report failed to address a critical factual issue, the case manager may prepare a supplement to the report to address the issue and shall deliver the supplement to both parties before the board hearing. The failure of the case manager to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

- (3) Within two days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and shall notify the career employee by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than seven nor more than 10 days after the board has notified the career employee, unless both parties agree to an extension. If the career employee did not request a hearing, the board may, by resolution, reject the superintendent's decision, or accept or modify the decision and dismiss, demote, reinstate, or suspend the career employee without pay.

- (4) If the career employee requests a board hearing, it shall be conducted in accordance with G.S. 115C-325(j2).

- (5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommendation and dismiss, demote, reinstate, or suspend the employee without pay.

- (6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

(j2) Board Hearing. -- The following procedures shall apply to a hearing conducted by the board:

- (1) The hearing shall be private.

- (2) If the career employee requested a hearing by a case manager, the board shall receive the following:

- a. The whole record from the hearing held by the case manager, including a transcript of the hearing, as well as any other records, exhibits, and documentary evidence submitted to the case manager at the hearing.

- b. The case manager's findings of fact, including any supplemental findings prepared by the case manager under G.S. 115C-325 (il)(4) or G.S. 115C-325(jl)(2).
 - c. The case manager's recommendation as to whether the grounds in G.S. 115C-325(e) submitted by the superintendent are substantiated.
 - d. The superintendent's recommendation and the grounds for the recommendation.
- (3) If the career employee did not request a hearing by a case manager, the board shall receive the following:
 - a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the documentary evidence to the career employee seven days before the hearing.
 - b. Any documentary evidence the career employee intends to use to rebut the superintendent's recommendation. The career employee shall provide the superintendent with the documentary evidence three days before the hearing.
 - c. The superintendent's recommendation and the grounds for the recommendation.
- (4) The superintendent and career employee may submit a written statement not less than three days before the hearing.
- (5) The superintendent and career employee shall be permitted to make oral arguments to the board based on the record before the board.
- (6) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the hearing before the case manager.
- (7) The board shall accept the case manager's findings of fact unless a majority of the board determines that the findings of fact are not supported by substantial evidence when reviewing the record as a whole. In such an event, the board shall make alternative findings of fact. If a majority of the board determines that the case manager did not address a critical factual issue, the board may remand the findings of fact to the case manager to complete the report to the board. If the case manager does not submit the report within seven days receipt of the board's request, the board may determine its own findings of fact regarding the critical factual issues not addressed by the case manager. The board's determination shall be based upon a preponderance of the evidence.
- (8) The board is not required to provide a transcript of the hearing to the career employee. If the board elects to make a transcript and if the career employee contemplates an appeal to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings. A career employee may have the

hearing transcribed by a court reporter at the career employee's expense.

(j3) Board Hearing for Certain Disciplinary Suspensions, Demotions of Career School Administrators, and for Reductions in Force. -- The following procedures shall apply for a board hearing under G.S. 115C-325(e)(2), G.S. 115C-325(f2), and G.S. 115C-325(f)(2)a.:

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.
- (3) At the hearing, the career employee and the superintendent shall have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of whether grounds exist for a disciplinary suspension without pay under G.S. 115C-325(f)(2)a., a demotion of a career school administrator under G.S. 115C-325(f2), or whether the grounds for a dismissal or demotion due to a reduction in force is justified.
- (4) Rules of evidence shall not apply to a hearing under this subsection and the board may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.
- (5) At least 10 days before the hearing, the superintendent shall provide to the career employee a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the superintendent intends to present.
- (6) At least six days before the hearing, the career employee shall provide the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the career employee intends to present.
- (7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subsection.
- (8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.
- (9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.
- (10) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates an appeal of the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings.

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated.

- (1) ~~If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher or the superintendent may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.~~
- (2) ~~If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal.~~
- (4) ~~Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated.~~
 - (1) ~~If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.~~
 - (2) ~~The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the local school administrative unit and the career teacher or his counsel shall have the right to cross-examine witnesses.~~
 - (3) ~~At the request of either the superintendent or the teacher, the board shall issue subpoenas requiring the production of papers or records or the attendance of persons residing within the State before the board. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The board shall pay witness fees for up to five witnesses subpoenaed on behalf of the teacher, except that it shall not pay for any witness who resides within the county in which the dismissal originates or who is an employee of the board. However, no employee of the board shall suffer any loss of compensation because he has been subpoenaed to testify at the hearing. These payments shall be as provided for witnesses in G.S. 7A-314.~~
 - (4) ~~At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such~~

~~hearing and not otherwise. The board's decision shall be based on a preponderance of the evidence.~~

- (5) ~~Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and superintendent. The board shall provide for making a transcript of its hearing. If the teacher contemplates an appeal to a court of law, he may request and shall receive at no charge a transcript of the proceedings.~~

(m) Probationary Teacher.

- (1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career ~~teacher employee~~ may be dismissed as set forth in subsections ~~(e)~~ (e), (f), ~~(f1)~~, and (h) to ~~(4)~~ (j3) above.

- (2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) (See note) Appeal. -- Any ~~teacher career employee~~ who has been dismissed or demoted pursuant to under G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (l) of this section under G.S. 115C-325(j2), or who has been suspended without pay pursuant to ~~G.S. 115C-325(a)(4)~~, under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, or any probationary teacher whose contract is not renewed under ~~G.S. 115C-325~~ G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the ~~teacher or school administrator career employee~~ is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board, determined under G.S. 115C-325(j2)(8) or G.S. 115C-325(j3)(10). A ~~teacher career employee~~ who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation; Nonrenewal of Contract. -- A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 1.

(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed

in teaching and related educational classes in the schools and institutions of the Departments of Human Resources and Correction regardless of the age of the students.

(q) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Schools.

(1) Notwithstanding any other provision of this section or any other law, the State Board:

a. Shall suspend with pay a principal who has been assigned to a school for more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter; and

b. May suspend with pay a principal who has been assigned to a school for no more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter.

These principals shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed. The panel shall order the dismissal of the principal, at which time the period of suspension with pay shall expire, unless the panel makes a public determination that the principal has established that the factors that led to the identification of the school as low-performing were not due to the inadequate performance of the principal. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subsection. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

- b. That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career teacher.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

- (2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of certified staff members who have engaged in a remediation plan under G.S. 115C-105.38A(a) but who, after two retests, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after two retests shall be substantial evidence of the inadequate performance of the certified staff member.

A certified staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to certified staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

- (3) The State Board of Education or a local board may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent a local board from refusing to renew the contract of any person employed in a school identified as low-performing under G.S. 115C-105.37.
- (4) Neither party to a school administrator contract is entitled to damages under this subsection.
- (5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection."
- (b) This section applies to proceedings initiated after September 1, 1997.

C. STUDIES ON MAKING RENEWAL OF TEACHER CERTIFICATES MORE RIGOROUS

Section 14. The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal process to align the process with State education goals

and improved student achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board of Education shall report to the Joint Legislative Oversight Committee by March 15, 1998, on the proposed new standards for the renewal of teacher certificates. The State Board may consolidate the report required under this section with the report on initial certification required under Section 6 of this act and the report on continuing certification required under Section 8 of this act.

The State Board of Education shall adopt new standards for the renewal of teacher certificates by May 15, 1998. The new standards adopted by the State Board shall apply to certificates that expire after July 1, 1998.

Section 15. The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall study and recommend ways to modify the administrator recertification process to ensure that all schools have well-qualified administrators. The State Board shall report the results of this study to the Joint Legislative Education Oversight Committee by February 15, 1998.

VII. A PLAN TO ATTRACT AND RETAIN HIGH QUALITY TEACHERS -- HIGHER STARTING SALARY, ENHANCED LONGEVITY PAY, AND SIGNIFICANT BUMPS IN THE SALARY SCHEDULE UPON ACHIEVING CONTINUING CERTIFICATION AND CAREER STATUS

Section 16. (a) It is the goal of the General Assembly to increase teacher salaries over the next four years so as to attract and retain excellent teachers in the public schools; therefore, it is the goal of the General Assembly to implement, over the upcoming four fiscal years, a plan for increasing the starting salary for teachers by nearly twenty percent (20%). This would bring the starting salary to at least twenty-five thousand dollars (\$25,000) by the year 2000. Under this plan, the salary schedule would also contain significant "bumps" at the third step, which is the point at which teachers have attained continuing certification; and at the fourth step, which is the point at which teachers may achieve career status.

It is further the intent of the General Assembly that local school administrative units will not use these State-funded salary increments to supplant local salary supplements.

As a first step in implementing this plan, it is the goal of the General Assembly to fund a salary schedule plan for the 1997-98 school year for teachers with "A" certificates similar to the following:

**1997-98 Salary Schedule Plan
"A" Teachers**

Years of Experience	10-Month Salary
0	\$22,150
1	\$22,570
2	\$23,000

3	\$24,270
4	\$25,280
5	\$25,750
6	\$26,230
7	\$26,720
8	\$27,210
9	\$27,700
10	\$28,200
11	\$28,720
12	\$29,250
13	\$29,790
14	\$30,340
15	\$30,900
16	\$31,470
17	\$32,050
18	\$32,650
19	\$33,260
20	\$33,890
21	\$34,520
22	\$35,160
23	\$35,810
24	\$36,480
25	\$37,170
26	\$37,870
27	\$38,580
28	\$39,310
29	\$40,050
30+	\$40,050

1998-99 Salary Schedule Plan
"A" Teachers

Years of Experience	10-Month Salary
0	\$23,100
1	\$23,520
2	\$23,950
3	\$25,510
4	\$26,780
5	\$27,790
6	\$28,260
7	\$28,740
8	\$29,230
9	\$29,720
10	\$30,210
11	\$30,710
12	\$31,230
13	\$31,760
14	\$32,300

15	\$32,850
16	\$33,410
17	\$33,980
18	\$34,560
19	\$35,160
20	\$35,770
21	\$36,400
22	\$37,030
23	\$37,670
24	\$38,320
25	\$38,990
26	\$39,680
27	\$40,380
28	\$41,090
29	\$41,820
30+	\$41,820

1999-2000 Salary Schedule Plan
"A" Teachers

Years of Experience	10-Month Salary
0	\$24,050
1	\$24,470
2	\$24,900
3	\$26,680
4	\$28,240
5	\$29,510
6	\$30,520
7	\$30,990
8	\$31,470
9	\$31,960
10	\$32,450
11	\$32,940
12	\$33,440
13	\$33,960
14	\$34,490
15	\$35,030
16	\$35,580
17	\$36,140
18	\$36,710
19	\$37,290
20	\$37,890
21	\$38,500
22	\$39,130
23	\$39,760
24	\$40,400
25	\$41,050
26	\$41,720

27	\$42,410
28	\$43,110
29	\$43,820
30+	\$43,820

2000-2001 School Year Plan
"A" Teachers

Years of Experience	10-Month Salary
0	\$25,000
1	\$25,420
2	\$25,850
3	\$27,370
4	\$28,750
5	\$30,060
6	\$31,330
7	\$32,340
8	\$32,810
9	\$33,290
10	\$33,780
11	\$34,270
12	\$34,760
13	\$35,260
14	\$35,780
15	\$36,310
16	\$36,850
17	\$37,400
18	\$37,960
19	\$38,530
20	\$39,110
21	\$39,710
22	\$40,320
23	\$40,950
24	\$41,580
25	\$42,220
26	\$42,870
27	\$43,540
28	\$44,230
29	\$44,930
30+	\$44,930

(b) To further implement this plan, it is the goal of the General Assembly to increase longevity pay for teachers with 25 or more years of State service to four and one-half percent (4.5%) of base salary, the same level as for State employees.

VIII. PAY FOR EXEMPLARY PERFORMANCE/SPECIAL ASSIGNMENTS

A. DEFINITION OF "MASTERS/ADVANCED COMPETENCIES" BY THE STATE BOARD OF EDUCATION

Section 17. (a) The State Board of Education, after consultation with the Board of Governors of The University of North Carolina, shall develop a new category of teacher certificate known as the "Masters/Advanced Competencies" certificate. To receive this certificate, an applicant shall successfully complete a masters degree program that includes rigorous academic preparation in the subject area in which the applicant will teach and in the skills and knowledge expected of a master teacher or the applicant shall demonstrate to the satisfaction of the State Board that the candidate has acquired the skills and knowledge expected of a master teacher.

(b) The Board of Governors of The University of North Carolina shall develop a plan to revise the current masters of education degree programs at the constituent institutions. The plan shall provide for degree programs that require participants take a more rigorous course of study than is currently required and that includes concentrations in the academic content areas in which the participants will teach. The plan shall also consider methods for: (i) providing the more rigorous course of study using the same number of hours as are currently required for masters of education degrees; and (ii) providing participants the opportunity to complete the masters of education degree program as part-time students, by summer school attendance, and at sites not located at a constituent institution's campus provided there is sufficient demand for the off-campus programs.

(c) Persons who qualify for a "G" certificate prior to September 1, 2000, shall be awarded a "Masters/Advanced Competencies" certificate without meeting additional requirements. On and after September 1, 2000, no additional "G" certificates shall be awarded.

(d) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 1998, on its progress in implementing subsection (a) of this section. The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by January 15, 1998, on its plan to implement subsection (b) of this section.

B. SALARY DIFFERENTIAL PLAN FOR "MASTERS/ADVANCED COMPETENCIES" AND FOR NBPTS CERTIFICATION

Section 18. It is the goal of the General Assembly to increase significantly the salaries of teachers who attain a "Masters/Advanced Competencies" certificate and teachers who are certified by the National Board for Professional Teaching Standards (NBPTS) so as to provide an incentive for good teachers to become excellent teachers. In order to do so, it is further the goal of the General Assembly to enact, for the 1997-98 school year, a salary schedule plan that will provide a twelve percent (12%) salary differential for teachers who attain NBPTS certification. It is further the goal of the General Assembly to enact by the year 2000 a salary schedule plan that will provide a ten percent (10%) salary differential to teachers who attain a "Masters/Advanced Competencies" certification. With these salary differentials, the top salary under the plan for teachers with both the "Masters/Advanced Competencies" certification and the NBPTS

certification would be a minimum of fifty-three thousand dollars (\$53,000) a year by the year 2000.

C. PARTICIPATION FEE AND PAID LEAVE FOR NBPTS PROGRAM

Section 19. It is the goal of the General Assembly to continue to pay for the National Board for Professional Teaching Standards participation fee and for up to three days of approved paid leave for teachers participating in the NBPTS program during the 1997-98 school year and the 1998-99 school year and thereafter for teachers in the public schools.

D. SCHOOL-BASED INCENTIVE AWARDS UNDER THE ABC'S PROGRAM

Section 20. (a) It is the goal of the General Assembly to provide school-based incentive awards under G.S. 115C-105.36 (a) to schools at which students achieve higher than expected improvements in the basics and the skills they need to get a good job, and to schools at which students meet the expected improvements in the basics and the skills they need to get a good job. In accordance with State Board of Education policy, incentive awards in schools that achieve higher than expected improvements may be up to: (i) one thousand five hundred dollars (\$1,500) for each teacher and for certified personnel; and (ii) five hundred dollars (\$500.00) for each teacher assistant. In accordance with State Board of Education policy, incentive awards in schools that meet the expected improvements may be up to: (i) seven hundred fifty dollars (\$750.00) for each teacher and for certified personnel; and (ii) three hundred seventy-five dollars (\$375.00) for each teacher assistant.

It is further the goal of the General Assembly to provide funds to provide assistance teams to low-performing schools. It is also the goal of the General Assembly to provide funds to provide remediation to teachers who work in schools that are identified as low-performing and who do not acquire a passing score on a test designated by the State Board of Education.

(b) G.S. 115C-105.37(b) reads as rewritten:

"(b) Each identified low-performing school shall ~~notify~~ provide written notification to the parents of students attending that school. The written notification shall include a statement that the State Board of Education has found that the school has failed 'failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in that the school are performing below grade level. level.' This notification also shall include a description of the steps the school is taking to improve student performance."

E. EXTRA PAY FOR MENTOR TEACHERS

Section 21. It is the goal of the General Assembly to fund a mentor teacher program that will recognize the achievements of excellent, experienced teachers and will provide each newly certified teacher with a qualified and well-trained mentor. The funds shall be used to compensate each mentor for serving as a mentor prior to and during the school year.

F. EXTRA PAY FOR NEW TEACHER DEVELOPMENT

Section 22. It is the goal of the General Assembly to compensate every newly certified teacher for three additional days of employment for orientation and classroom preparation.

G. EXTRA PAY FOR PROFESSIONAL DEVELOPMENT

Section 23. It is the goal of the General Assembly to provide funds for teachers' participation in professional development programs that are aligned with State educational goals and improved student achievement. The funds should be used for teacher development programs that enable teachers to renew continually their knowledge and professional skills, programs that train principals to observe and evaluate teachers, programs that train master teachers to observe teachers that have not achieved career status, programs that train mentors for beginning teachers, and other programs as directed by the State Board of Education.

H. EXTRA PAY FOR EXTRA DAYS

Section 24. It is the goal of the General Assembly to provide funds to enable school systems to utilize better the teacher workdays within the calendar for planning, staff development, remediation, and other purposes. These funds shall be used to pay teachers for working on, and thereby forfeiting, vacation days.

I. ADDITIONAL PAY FOR TEACHERS WITH ADDITIONAL RESPONSIBILITIES

Section 25. It is the goal of the General Assembly to provide funds to compensate teachers for additional assignments and responsibilities designed to improve student achievement for additional workdays outside of the school calendar. These funds should be allocated to local school administrative units on the basis of average daily membership. The local board should use one-half of the funds on the recommendation of the local superintendent and one-half on the recommendation of school improvement teams. These funds could be used to compensate teachers for purposes such as teaching after-school or Saturday academies for students at risk of academic failure, developing curriculum, participating in teacher training and development outside of the school calendar, and teaching classes on Saturday to students needing additional instructional opportunities.

IX. FUNDS FOR COMPUTER SYSTEMS

Section 26. G.S. 115C-546.1(a) reads as rewritten:

"(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs, needs and their equipment needs under their local school technology plans."

Section 27. G.S. 115C-546.2 reads as rewritten:

"§ 115C-546.2. *Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.*

(a) Monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

(b) Monies Counties shall use monies in the Fund shall be used for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings, buildings; for equipment to implement a local school technology plan that is approved pursuant to G.S. 115C-102.6C; or for both. Monies used to implement a local school technology plan shall be transferred to the State School Technology Fund and allocated by that Fund to the local school administrative unit for equipment.

As used in this section, 'public school buildings' only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school ~~buildings or buildings~~, for the purchase of land for public school buildings, or for equipment to implement a local school technology plan, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

In the event a county finds that its public school building needs and its school technology needs can be met in a more timely fashion through the allocation of financial resources previously allocated for purposes other than school building needs or school technology needs and not restricted for use in meeting public school building ~~needs~~, needs or school technology needs, the county commissioners may, with the concurrence of the affected local Board of Education, use those financial resources to meet school building needs and school technology needs and may allocate the funds it receives under this Article for purposes other than school building needs or school technology needs to the extent that financial resources were redirected from such purposes. The concurrence described herein shall be secured in advance of the allocation of the previously unrestricted financial resources and shall be on a form prescribed by the Local Government Commission.

(c) Monies in the Fund allocated for capital projects shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Monies in the Fund transferred to the State Technology Fund do not require a local match.

Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local matching requirement. Funds expended by a county after July 1, 1986, for land acquisition, engineering fees, architectural fees, or other directly related costs for a public school building capital project that was not completed prior to July 1, 1987, may be used to meet the local match requirement."

X. FUNDS FOR TEACHER SUPPLY AND DEMAND STUDY

Section 28. It is the goal of the General Assembly to provide funds for the State Board of Education to conduct a comprehensive teacher supply and demand study.

XI. FUNDS FOR TRAINING AND COMPENSATING CASE MANAGERS

Section 29. It is the goal of the General Assembly to provide funds for training individuals who will serve as case managers. It is also the goal of the General Assembly to provide funds for compensating and reimbursing the expenses of case managers.

XII. FUNDS FOR DEVELOPING NEW EVALUATIONS

Section 30. It is the goal of the General Assembly to provide funds for developing and revising uniform performance standards and criteria to be used in evaluating professional public school employees including school administrators and for reviewing performance pay systems for teachers.

XIII. MISCELLANEOUS PROVISIONS**A. CAPTIONS ARE FOR REFERENCE ONLY AND DO NOT LIMIT TEXT**

Section 31. The series of captions used in this act (the descriptive phrases in boldface and capital letters) are inserted for convenience and reference only, and they in no way define, limit, or prescribe the scope or application of the text of this act.

B. NO APPROPRIATIONS REQUIRED BY ACT

Section 32. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Nothing in Sections 16 through 25 or Sections 28 through 30 of this act shall be construed to create any rights or causes of action.

C. EFFECTIVE DATES

Section 33. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 1997.

Became law upon approval of the Governor at 11:35 p.m. on the 24th day of June, 1997.

S.B. 366

CHAPTER 222

AN ACT TO REVISE THE MEDIATION PROCEDURE FOR
RESOLVING SCHOOL BUDGET DISPUTES BETWEEN LOCAL
BOARDS OF EDUCATION AND BOARDS OF COUNTY

COMMISSIONERS, AND TO CLARIFY THE SCOPE OF THE SCHOOL FACILITIES GUIDELINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-431 reads as rewritten:

"§ 115C-431. *Procedure for resolution of dispute between board of education and board of county commissioners.*

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations.

Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the boards' differences.

At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, ~~either board may notify the clerk of superior court who shall request the appointment of a mediator by superior court under G.S. 7A-38.1. The mediator shall be appointed within five days of the notification to the clerk. The mediator shall present recommendations for resolution of the matters in dispute within 15 days of the notification to the clerk.~~ the mediator shall, at the request of either board, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Unless otherwise agreed upon by both boards, the following individuals shall constitute the two working groups empowered to represent their respective boards during the mediation:

- (1) The chair of each board or the chair's designee;
- (2) The superintendent of the local school administrative unit and the county manager or either's designee;
- (3) The finance officer of each board; and
- (4) The attorney for each board.

Members of both boards, their chairs, and representatives shall cooperate with and respond to all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in

any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. Reports by members of either working group to their respective boards shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

Unless both boards agree otherwise, or unless the boards have already resolved their dispute, the mediation shall end no later than August 1. The mediator shall have the authority to determine that an impasse exists and to discontinue the mediation. The mediation may continue beyond August 1 provided both boards agree. If both boards agree to continue the mediation beyond August 1, the board of county commissioners shall appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient to equal the local contribution to this fund for the previous year.

If the working groups reach a proposed agreement, the terms and conditions must be approved by each board. If no agreement is reached, the mediator shall announce that fact to the chairs of both boards, the Senior Resident Superior Court Judge, and the public. The mediator shall not disclose any other information about the mediation. The mediator shall not make any recommendations or public statement of findings or conclusions.

The local board of education and the board of county commissioners shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes.

(c) ~~Within five days of receiving the recommendations of the mediator,~~ either board after an announcement of no agreement by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall

give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an action filed under this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed."

Section 2. G.S. 143-318.11(a)(3) reads as rewritten:

"(a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby

- acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
 - (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
 - (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
 - (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct."

Section 3. G.S. 115C-521(c) reads as rewritten:

"(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. No board of

education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board. No local board of education shall contract for more money than is made available for the erection of a new building. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441(c). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor. Nothing in this subsection shall prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, ~~the State Board of Education, under any rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in whole or in part, from the loan or grant funds, shall have been approved by a designated agent of the State Board of Education. Upon approval by the State Board of Education, the State Treasurer may pay the balance of the loan or grant to the treasurer of the local school administrative unit for which the loan or grant was made.~~ no board of education shall invest any money until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 1997.

Became law upon approval of the Governor at 10:35 a.m. on the 25th day of June, 1997.

H.B. 363

CHAPTER 223

AN ACT TO DIRECT THE DEPARTMENT OF HUMAN RESOURCES NOT TO ELECT ANY CHILD SUPPORT DISTRIBUTION OPTION FOR WHICH FEDERAL FUNDS ARE NOT PROVIDED AND TO INCREASE THE APPLICATION FEE FOR NONPUBLIC ASSISTANCE CHILD SUPPORT ENFORCEMENT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Effective 30 days after this act becomes law, the Department of Human Resources shall not elect any child support distribution option for families receiving cash assistance under the State Plan for the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State to exercise the option.

Section 2. G.S. 110-130.1(a) reads as rewritten:

"(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00). The fee shall be reduced to ten dollars (\$10.00) if the individual applying for the services is indigent. An indigent individual is an individual whose gross income does not exceed one hundred percent (100%) of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services. For the purposes of this subsection, the term 'gross income' has the same meaning as defined in G.S. 105-134.1."

Section 3. Section 1 of this act is effective when it becomes law. Section 2 of this act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law upon approval of the Governor at 10:37 a.m. on the 25th day of June, 1997.

H.B. 587

CHAPTER 224

AN ACT TO ALLOW THE MECKLENBURG COUNTY ALCOHOLIC BEVERAGE CONTROL BOARD TO PROVIDE ITS OWN LAW ENFORCEMENT PERSONNEL AND TO CONTRACT FOR ADDITIONAL LAW ENFORCEMENT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. -- Instead of of, or in addition to, hiring local ABC officers, a local board may contract to pay its enforcement funds to with a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may

be made with more than one agency at the same time. When such a contract for enforcement exists, the those officers of the contracting law-enforcement agency designated in the contract shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have, once the designated officers of the contracting law enforcement agency have been certified by the chief ABC officer as having been trained. In order to be certified, the designated officers shall receive the same training in the enforcement of the ABC laws as is provided to local ABC officers. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(c4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement. Enforcement agreements authorized by this section may be cancelled by the local ABC board upon 20 days' written notice.

Payments, if any, received by a contracting agency for furnishing law enforcement services shall be in addition to any profits allocated to local governments derived from the sale of alcoholic beverages."

Section 2. This act applies to the Mecklenburg County Alcoholic Beverage Control Board only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 1997.

Became law on the date it was ratified.

H.B. 5

CHAPTER 225

AN ACT TO REQUIRE CERTAIN COVERAGE FOR DIABETES IN HEALTH AND ACCIDENT INSURANCE POLICIES, IN HOSPITAL OR MEDICAL SERVICES PLANS, AND IN HMO PLANS.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-51-61. Coverage for certain treatment for diabetes.

(a) Every policy or contract of accident or health insurance, and every preferred provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55, that is issued, renewed, or amended on or after October 1, 1997, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The insurer shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same

deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to the diabetes coverage required under this section.

(b) For the purposes of this section, 'physician' is a person licensed to practice in this State under Article 1 or Article 7 of Chapter 90 of the General Statutes."

Section 2. Article 65 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-65-91. Coverage for certain treatment of diabetes.

(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55, that is issued, renewed, or amended on or after October 1, 1997, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The hospital or medical service plan shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to the diabetes coverage required under this section.

(b) For the purposes of this section, 'physician' is a person licensed to practice in this State under Article 1 or Article 7 of Chapter 90 of the General Statutes."

Section 3. Article 67 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-67-74. Coverage for certain treatment of diabetes.

(a) Every health care plan written by a health maintenance organization and in force, issued, renewed, or amended on or after October 1, 1997, that is subject to this Article, shall provide coverage for medically appropriate and necessary services, including diabetes outpatient self-management training and educational services, and equipment, supplies, medications, and laboratory procedures used to treat diabetes. Diabetes outpatient self-management training and educational services shall be provided by a physician or a health care professional designated by the physician. The health maintenance organization shall determine who shall provide and be reimbursed for the diabetes outpatient self-management training and educational services. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to the diabetes coverage required under this section.

(b) For the purposes of this section, 'physician' is a person licensed to practice in this State under Article 1 or Article 7 of Chapter 90 of the General Statutes."

Section 4. Nothing in this act shall apply to specified accident, specified disease, hospital indemnity, or long-term care health insurance policies.

Section 5. The North Carolina Commission for Health Services shall develop voluntary standards or guidelines for diabetes outpatient self-management training and educational services based on clinical practice recommendations and guidelines established by the Center for Disease Control and the American Diabetes Association. These standards or guidelines are not subject to Article 2A of Chapter 150B of the General Statutes.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 4:00 p.m. on the 26th day of June, 1997.

H.B. 260

CHAPTER 226

AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR CONSERVATION PURPOSES, TO ENSURE THAT CONSERVATION AND PRESERVATION AGREEMENTS ARE CONSIDERED IN DETERMINING THE APPRAISED VALUE OF LAND AND IMPROVEMENTS, AND TO ESTABLISH THE CONSERVATION GRANT FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.34 reads as rewritten:

"§ 105-130.34. *Credit for certain real property donations.*

(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes, ~~shall be~~ purposes is allowed a credit against the ~~taxes tax~~ imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, ~~local government~~ a local government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to G.S. 105-130.9; ~~provided, however, that lands~~ 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances shall not be a regulation or ordinance are not eligible for this credit. The credit allowed under this section may ~~not exceed twenty-five thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000). To support the credit allowed by this section, ~~the taxpayer shall must~~ the taxpayer must file with its income tax ~~return return~~, for the taxable year in which the credit is claimed, a certification by the Department of Environment, Health, and Natural Resources that the property donated is

suitable for one or more of the valid public benefits set forth in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) ~~The fair market value, or any portion thereof, of a~~ That portion of a qualifying donation that is ~~not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of the donation the basis for a credit allowed as a credit pursuant to under this section shall not be is not eligible for deduction as a charitable contribution. contribution under G.S. 105-130.9."~~

Section 2. G.S. 105-151.12 reads as rewritten:

"§ 105-151.12. *Credit for certain real property donations.*

(a) A person who makes a qualified donation of ~~interests~~ an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation ~~purposes, shall be~~ purposes is allowed as a credit against the tax imposed by this Division ~~an amount~~ equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions under the Code; ~~provided, however, that lands~~ Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under ~~such regulations or ordinances~~ a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~twenty-five thousand dollars (\$25,000), one hundred thousand dollars (\$100,000).~~ To support the credit allowed by this section, the taxpayer shall ~~must~~ file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth ~~by~~ in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) In order to claim the credit allowed under this section, the taxpayer must add the fair market value of the donated property interest, up to a maximum of ~~one hundred thousand dollars (\$100,000), four hundred thousand dollars (\$400,000),~~ to taxable income as provided in G.S. 105-134.6(c).

(d) In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 1998, to qualify for the credit allowed by this section."

Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

"(5) The fair market value, up to a maximum of ~~one hundred thousand dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

Section 4. G.S. 105-287(a) reads as rewritten:

"(a) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, ~~to~~ to accomplish any one or more of the following:

- (1) Correct a clerical or mathematical error; error.
- (2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment; or adjustment.
- (2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.
- (3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b)."

Section 5. G.S. 105-317(a) reads as rewritten:

"(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

- (1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.
- (2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.

- (3) To appraise partially completed buildings in accordance with the degree of completion on January 1."

Section 6. Chapter 113A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 16.

"Conservation Easements Program.

"§ 113A-230. Legislative findings; intent.

The General Assembly finds that a statewide network of protected natural areas, riparian buffers, and greenways can best be accomplished through a conservation easements program. The General Assembly further finds that other public conservation and use programs, such as natural area protection, beach access, trail systems, historic landscape protection, and agricultural preservation, can benefit from increased conservation tools. In this Article, the General Assembly therefore intends to extend the ability of the Department of Environment, Health, and Natural Resources to achieve these purposes and to strengthen the capability of private nonprofit land trusts to participate in land and water conservation.

"§ 113A-231. Program to accomplish conservation purposes.

The Department of Environment, Health, and Natural Resources shall develop a nonregulatory program that uses conservation tax credits as a prominent tool to accomplish conservation purposes, including the maintenance of ecological systems.

"§ 113A-232. Conservation Grant Fund.

(a) Fund Created. -- The Conservation Grant Fund is created within the Department of Environment, Health, and Natural Resources. The Fund shall be administered by that Department. The purpose of the Fund is to stimulate the use of conservation easements, to improve the capacity of private nonprofit land trusts to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase citizen participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements.

(b) Fund Sources. -- The Conservation Grant Fund shall consist of any monies appropriated to it by the General Assembly and any monies received from public or private sources. Unexpended monies in the Fund that were appropriated from the General Fund by the General Assembly shall revert at the end of the fiscal year unless the General Assembly otherwise provides. Unexpended monies in the Fund from other sources shall not revert and shall remain available for expenditure in accordance with this Article.

(c) Eligibility. -- In order for land to be the subject of a grant under this Article, the land must possess or have a high potential to possess ecological value, must be reasonably restorable, and must qualify for tax credits under G.S. 105-130.34 or G.S. 105-151.12. Private nonprofit land trust organizations must be qualified pursuant to G.S. 105-130.34 and G.S. 105-151.12 and must be certified under section 501(c)(3) of the Internal Revenue Code.

(d) Use of Revenue. -- Revenue in the Conservation Grant Fund may be used only for the following purposes:

- (1) The administrative costs of the Department in administering the Fund.
- (2) Conservation grants made in accordance with this Article.
- (3) To establish an endowment account, the interest from which will be used for a purpose described in G.S. 113A-233(a)(3) or (a)(5).

"§ 113A-233. Uses of a grant from the Conservation Grant Fund.

(a) Allowable Uses. -- A grant from the Conservation Grant Fund may be used only to pay for one or more of the following costs:

- (1) Reimbursement for total or partial transaction costs for donations from individuals or corporations satisfying either of the following:
 - a. Insufficient financial ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value.
 - b. Insufficient tax burdens to allow these costs to be offset by the value of tax credits under G.S. 105-130.34 or G.S. 105-151.12 or by charitable deductions.
- (2) Management support, including initial baseline inventory and planning.
- (3) Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.
- (4) Education on conservation, including information materials intended for landowners and education for staff and volunteers.
- (5) Stewardship of land.
- (6) Transaction costs, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.
- (7) Administrative costs for short-term growth or for building capacity.

(b) Prohibition. -- The Fund shall not be used to pay the purchase price for any interest in land.

"§ 113A-234. Administration of grants.

The Secretary of Environment, Health, and Natural Resources shall establish the procedures and criteria for awarding grants from the Conservation Grant Fund. The criteria shall focus grants on those areas, approaches, and techniques that are likely to provide the optimum positive effect on environmental protection. The Secretary shall make the final decision on the award of grants and shall announce the award publicly in a timely manner.

The Secretary may administer the grants under this Article or may contract for selected activities under this Article. If administrative services are contracted, the Department shall establish guidance and criteria for its operation and contract with a statewide nonprofit land trust service organization.

"§ 113A-235. Conservation easements.

Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act. The Department of Environment, Health, and Natural Resources shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor

compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected ecosystems."

Section 7. Sections 1 through 3 of this act are effective for taxable years beginning on or after January 1, 1997. The remaining sections of this act become effective July 1, 1997.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 4:10 p.m. on the 26th day of June, 1997.

H.B. 374

CHAPTER 227

AN ACT TO AMEND THE CRIME VICTIMS COMPENSATION ACT TO INCREASE THE ALLOWABLE EXPENSE FOR FUNERALS, TO MAKE VICTIMS OF HIT AND RUN ACCIDENTS AND VICTIMS OF TERRORISM ELIGIBLE FOR COMPENSATION, AND TO PROVIDE THAT COLLATERAL SOURCES FOR THE PAYMENT OF FUNERAL EXPENSES SHALL NOT CONSTITUTE GROUNDS FOR DENIAL OR REDUCTION OF AN AWARD OF COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-2(1) reads as rewritten:

"(1) 'Allowable expense' means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of ~~two thousand dollars (\$2,000)~~ three thousand five hundred dollars (\$3,500) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service."

Section 2. G.S. 15B-2(5) reads as rewritten:

"(5) 'Criminally injurious conduct' means conduct ~~which that~~ by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct ~~which that~~ amounts to an offense involving impaired driving as defined in ~~G.S. 20-4.01(24a)~~ G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Chapter, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a

person with a mobility impairment. Criminally injurious conduct but does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes. Criminally injurious conduct shall also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State."

Section 3. G.S. 15B-11(d) reads as rewritten:

"(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g). The existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation."

Section 4. No additional funds shall be appropriated to implement this act as provided in G.S. 15B-22.

Section 5. This act is effective when it becomes law and applies to claims arising from criminally injurious conduct that occurred on or after April 1, 1997.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 2:55 p.m. on the 27th day of June, 1997.

H.B. 465

CHAPTER 228

AN ACT TO PROVIDE THAT A DEFENDANT BE NOTIFIED WHEN THE PROSECUTOR TAKES A VOLUNTARY DISMISSAL OF THE CHARGES AGAINST THE DEFENDANT AND NEITHER THE DEFENDANT NOR THE DEFENDANT'S ATTORNEY IS PRESENT AT THE TIME OF THE DISMISSAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-931 is amended by adding a new subsection to read:

"(a1) Unless the defendant or the defendant's attorney has been notified otherwise by the prosecutor, a written dismissal of the charges against the defendant filed by the prosecutor shall be served in the same manner prescribed for motions under G.S. 15A-951. In addition, the written dismissal shall also be served on the chief officer of the custodial facility when the record reflects that the defendant is in custody."

Section 2. This act becomes effective December 1, 1997.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 2:56 p.m. on the 27th day of June, 1997.

H.B. 907

CHAPTER 229**AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT ACTIONS INVOLVING CERTAIN FAMILY ISSUES.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-38.4. Mediated settlement conferences in district court actions.

(a) The purpose of this section is to authorize the design, implementation, and evaluation of a pilot program in which parties to district court actions involving equitable distribution, alimony, and support may be required to attend a pretrial mediated settlement conference or other settlement procedure.

(b) The Dispute Resolution Commission established under the Judicial Department shall, with the advice of the Director of the Administrative Office of the Courts, design the pilot program and its coordination with existing settlement programs. The planning and design phase of the program shall include representatives from the Conference of Chief District Court Judges, the AOC Child Custody Mediation Advisory Committee, the Court Ordered Arbitration Subcommittee of the Supreme Court's Dispute Resolution Committee, the North Carolina Mediation Network, the North Carolina Association of Professional Family Mediators, the North Carolina Association of Clerks of Superior Court, the North Carolina Association of Trial Court Administrators, the Family Law Section of the North Carolina Bar Association, and the Dispute Resolution Section of the North Carolina Bar Association.

(c) The Supreme Court may adopt rules to implement this section. The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply to this section.

(d) The chief district court judge of any participating district may order a mediated settlement conference for any action pending in the district involving issues of equitable distribution, alimony, or child or spousal support. The chief district court judge may by local rule order all such cases, not otherwise exempted by Supreme Court rule, to mediated settlement conference.

(e) The parties to a district court action in which a mediated settlement conference is ordered, their attorneys, and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference, or other settlement procedure ordered by the court, unless excused by the rules of the Supreme Court or by order of the chief district court judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(f) Any person required to attend a mediated settlement conference or other settlement procedure ordered by the court who, without good cause, fails to attend in compliance with this section and the rules adopted under this section, shall be subject to any appropriate monetary sanction imposed by a chief or presiding district court judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(g) The parties to a district court action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules of the Supreme Court, a mediator shall be appointed by the chief district court judge or its designee.

(h) The chief district court judge, at the request of and with the consent of the parties, may order the parties to attend and participate in any other settlement procedure authorized by rules of the Supreme Court or by local district court rules, in lieu of attending a mediated settlement conference. Neutral third parties acting pursuant to this section shall be selected and compensated in accordance with the rules or pursuant to agreement of the parties. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law.

(i) Mediators and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(j) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of settlement procedures are afforded an opportunity to participate without cost to an indigent party and without expenditure of State funds.

(k) Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same

claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(l) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate in the mediated settlement conference program established pursuant to this section. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards. The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission. An administrative fee not to exceed two hundred dollars (\$200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operation under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff.

(m) Nothing in this section or rules adopted pursuant to it shall restrict the right to jury trial."

Section 2. The Administrative Office of the Courts may solicit and accept funds from private sources to design a pilot program and to develop an implementation and evaluation program, together with a cost and proposed funding analysis of the programs authorized under this act, and shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by May 1, 1998.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 2:59 p.m. on the 27th day of June, 1997.

H.B. 1008

CHAPTER 230

AN ACT REGARDING THE EDUCATIONAL REQUIREMENTS FOR
CHIROPRACTIC LICENSURE AND TO AUTHORIZE THE BOARD
TO LICENSE PERSONS WHO HAVE PASSED THE NATIONAL
CHIROPRACTIC EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-143 reads as rewritten:

"§ 90-143. *Definitions of chiropractic; examinations; educational requirements.*

(a) 'Chiropractic' is herein defined to be the science of adjusting the cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body.

(b) It shall be the duty of the North Carolina State Board of Chiropractic Examiners (hereinafter referred to as 'Board') to examine for license licensure to practice chiropractic in this State every any applicant who complies with the following provisions: is or will become, within 60 days of examination, a graduate of a four-year chiropractic college that is either accredited by the Council on Chiropractic Education or deemed by the Board to be the equivalent of such a college and who furnishes to the Board, in the manner prescribed by the Board, all of the following:

- (1) Furnishes proof Satisfactory evidence of good moral character; character.
- (2) Satisfies the Board Proof that the applicant has received a baccalaureate degree from a college or university accredited by a regional accreditation body recognized by the United States Department of Education; and Education.
- (3) Satisfies the Board that the applicant can, within 60 days of the date of examination exhibit a diploma or furnish proof of graduation from a chiropractic college accredited by the Council on Chiropractic Education or holding recognized candidate for accreditation status with the Council on Chiropractic Education or a college teaching chiropractic that, in the Board's opinion, meets the equivalent standards established by the Council on Chiropractic Education, requiring an attendance of not less than four academic years, and supplying such facilities for clinical and scientific instruction, as shall meet the approval of the Board. Provided, however, no license shall be issued until an applicant furnishes a diploma or proof of graduation, from an accredited chiropractic college, that meets the approval of the Board. A transcript confirming that the applicant has received at least 4,200 hours of accredited chiropractic education. The Board shall not count any hours earned at an institution that was not accredited by the Council on Chiropractic Education or was not, as determined by the Board, the equivalent of such an institution at the time the hours were earned.

The examination shall include, but not be limited to, the following studies: neurology, chemistry, pathology, anatomy, histology, physiology, embryology, dermatology, diagnosis, microscopy, gynecology, hygiene, eye, ear, nose and throat, orthopody, diagnostic radiology, jurisprudence, palpation, nerve tracing, chiropractic philosophy, theory, teaching and practice of chiropractic.

(c) The Board shall not issue a license to any applicant until the applicant exhibits a diploma or other proof that the Doctor of Chiropractic degree has been conferred.

(d) The Board may grant a license to an applicant if the applicant's scores on all parts of the examination given by the National Board of Chiropractic Examiners equal or exceed passing scores on the Board's examination, and the applicant satisfies all other requirements for licensure as provided in this Article."

Section 2. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 3:00 p.m. on the 27th day of June, 1997.

H.B. 933

CHAPTER 231

AN ACT TO INCREASE THE FEES COLLECTED UNDER THE PHARMACY PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.24 reads as rewritten:

"§ 90-85.24. *Fees collectible by Board.*

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, ~~one hundred fifty dollars (\$150.00)~~ one hundred sixty dollars (\$160.00) plus the cost of the test material; for renewing the license as a pharmacist, ~~sixty-five dollars (\$65.00)~~ one hundred ten dollars (\$110.00); for renewing the license of an assistant pharmacist, ten dollars (\$10.00); for licenses without examination as provided in G.S. 90-85.20, original, ~~three hundred dollars (\$300.00)~~ four hundred dollars (\$400.00); for original registration of a ~~drugstore, two hundred fifty dollars (\$250.00),~~ pharmacy, three hundred fifty dollars (\$350.00), and renewal thereof, ~~one hundred twenty-five dollars (\$125.00)~~ one hundred seventy-five dollars (\$175.00); for annual registration as a dispensing physician under G.S. 90-85.21(b), fifty dollars (\$50.00); for annual registration as a dispensing physician assistant under G.S. 90-18.1, fifty dollars (\$50.00); for annual registration as a dispensing nurse practitioner under G.S. 90-18.2, fifty dollars (\$50.00); for registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars (\$25.00); for a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars (\$25.00); for registration to dispense devices, deliver medical equipment, or both, three hundred dollars (\$300.00) per year. All fees shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the Board."

Section 2. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 3:05 p.m. on the 27th day of June, 1997.

S.B. 997

CHAPTER 232

AN ACT TO PROVIDE THAT A PERSON WHO IGNORES A WARNING REGARDING PERSONAL SAFETY IN A DISASTER SITUATION AND PLACES HIMSELF OR HERSELF OR ANOTHER IN DANGER AND REQUIRES AN EMERGENCY RESCUE IS CIVILLY LIABLE FOR THE COSTS OF THE RESCUE EFFORT.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"§ 166A-15.1. Willfully ignore warning in a disaster.

(a) In a disaster as defined by G.S. 166A-4, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if:

- (1) The person ignores the warning, and: (i) engages in an activity or course of action that a reasonable person would not pursue, or (ii) fails to take a course of action that a reasonable person would pursue;
- (2) As a result of ignoring the warning the person places himself or herself or another in danger; and
- (3) A governmental rescue effort is undertaken on the endangered person's behalf."

Section 2. This act becomes effective December 1, 1997, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law upon approval of the Governor at 3:06 p.m. on the 27th day of June, 1997.

H.B. 597

CHAPTER 233

AN ACT TO BROADEN THE AUTHORITY OF MUNICIPALITIES AND HOSPITAL AUTHORITIES REGARDING LEASES AND JOINT VENTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-6 reads as rewritten:

"§ 131E-6. Definitions.

As used in this Part, unless otherwise specified:

- (1) 'City', as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better

government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and 'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

- (2) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.
- (3) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.
- (4) 'Hospital facility' means ~~any type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term 'hospital facility' also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.~~ one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular

parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

- (4.1) 'Hospital land' means air and ground rights to real property held either in fee or by lease by a municipality, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in subsection (4) of this section and G.S. 131E-16(15).
- (5) 'Municipality' means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.
- (6) 'Nonprofit association' or 'nonprofit corporation' means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual."

Section 2. G.S. 131E-13 reads as rewritten:

"§ 131E-13. Lease or sale of hospital facilities to or from for-profit or nonprofit corporations or other business entities by municipalities and hospital authorities.

(a) A municipality or hospital authority as defined in G.S. 131E-16(14), may lease, sell, or convey any hospital facility, or part, to a corporation, foreign or domestic, authorized to do business in North Carolina, subject to these conditions, which shall be included in the lease, agreement of sale, or agreement of conveyance:

- (1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical-surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Human Resources.
- (2) The corporation shall ensure that indigent care is available to the population of the municipality or area served by the hospital authority at levels related to need, as previously demonstrated and determined mutually by the municipality or hospital authority and the corporation.
- (3) The corporation shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

- (4) The corporation shall ensure that admission to and services of the facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.
- (5) The corporation shall prepare an annual report that shows compliance with the requirements of the lease, sale, or conveyance.

The corporation shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if the corporation dissolves without a successor corporation to carry out the terms and conditions of the lease, agreement of sale, or agreement of conveyance, all ownership or other rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital; provided that any building, land, or equipment associated with the hospital facility that the corporation has constructed or acquired since the sale may revert only upon payment to the corporation of a sum equal to the cost less depreciation of the building, land, or equipment.

This section shall not apply to leases, sales, or conveyances of nonmedical services or commercial activities, including the gift shop, cafeteria, the flower shop, or to surplus hospital property that is not required in the delivery of necessary hospital services at the time of the lease, sale, or conveyance.

~~Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, sales or conveyances under this section.~~

(b) In the case of a sale or conveyance, if either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the corporation shall agree to the following:

By the effective date of sale or conveyance, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section. A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the

acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility if the facility has been sold or conveyed to a corporation, foreign or domestic, authorized to do business in North Carolina.

(c) In the case of a lease, the municipality or hospital authority shall determine the length of the lease. No lease executed under this section shall be deemed to convey a freehold interest. Any sublease or assignment of the lease shall be subject to the conditions prescribed by this section. If the term of the lease is more than 10 years, and either general obligation bonds or revenue bonds issued for the benefit of the hospital to be leased are outstanding at the time of the lease, then the corporation shall agree to the following:

By the effective date of the lease, the corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

No bonds, notes or other evidences of indebtedness shall be issued by a municipality or hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

(d) The municipality or hospital authority shall comply with the following procedures before leasing, selling, or conveying a hospital facility, or part thereof:

- (1) The municipality or hospital authority shall first adopt a resolution declaring its intent to sell, lease, or convey the hospital facility at a regular meeting on 10 days' public notice. Notice shall be given by publication in one or more papers of general circulation in the affected area describing the intent to lease, sell, or convey the hospital facility involved, known potential buyers or lessees, a solicitation of additional interested buyers or lessees and intent to negotiate the terms of the lease or sale. Specific notice, given by certified mail, shall be given to the local office of each state-supported program that has made a capital expenditure in the hospital facility, to the Department of Human Resources, and to the Office of State Budget and Management.
- (2) At the meeting to adopt a resolution of intent, the municipality or hospital authority shall request proposals for lease or purchase by direct solicitation of at least five prospective lessees or buyers. The solicitation shall include a copy of G.S. 131E-13.

- (3) The municipality or hospital authority shall conduct a public hearing on the resolution of intent not less than 15 days after its adoption. Notice of the public hearing shall be given by publication at least 15 days before the hearing. All interested persons shall be heard at the public hearing.
- (4) Before considering any proposal to lease or purchase, the municipality or hospital authority shall require information on charges, services, and indigent care at similar facilities owned or operated by the proposed lessee or buyer.
- (5) Not less than 45 days after adopting a resolution of intent and not less than 30 days after conducting a public hearing on the resolution of intent, the municipality or hospital authority shall conduct a public hearing on proposals for lease or purchase that have been made. Notice of the public hearings shall be given by publication at least 10 days before the hearing. The notice shall state that copies of proposals for lease or purchase are available to the public.
- (6) The municipality or hospital authority shall make copies of the proposals to lease or purchase available to the public at least 10 days before the public hearing on the proposals.
- (7) Not less than 60 days after adopting a resolution of intent, the municipality or hospital authority at a regular meeting shall approve any lease, sale, or conveyance by a resolution. The municipality or hospital authority shall adopt this resolution only upon a finding that the lease, sale, or conveyance is in the public interest after considering whether the proposed lease, sale, or conveyance will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons. Notice of the regular meeting shall be given at least 10 days before the meeting and shall state that copies of the lease, sale, or conveyance proposed for approval are available.
- (8) At least 10 days before the regular meeting at which any lease, sale, or conveyance is approved, the municipality or hospital authority shall make copies of the proposed contract available to the public.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section or G.S. 131E-23, a hospital authority as defined in G.S. 131E-16(14) or a municipality may lease or sublease hospital land to a corporation or other business entity, whether for profit or not for profit, and may participate as an owner, joint venturer, or other equity participant with a corporation or other business entity for the development, construction, and operation of medical office buildings and other health care or hospital facilities, so long as the municipality, hospital authority, or other entity continues to maintain its primary community general hospital facilities as required by subsection (a) of this section.

(f) A municipality or hospital authority may permit or consent to the pledge of hospital land or leasehold estates in hospital land to facilitate the development, construction, and operation of medical office buildings and

other health care or hospital facilities. A municipality or hospital authority also may, as lessee, enter into master leases or agreements to fund for temporary vacancies relating to hospital land or hospital facilities for use in the provision of health care.

(g) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to leases, subleases, sales, or conveyances under this Chapter."

Section 3. G.S. 131E-16 reads as rewritten:

"§ 131E-16. Definitions.

As used in this Part, unless otherwise specified:

- (1) 'Board of county commissioners' means the legislative body charged with governing the county.
- (2) 'Bonds' means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.
- (3) 'City' means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.
- (4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.
- (5) 'City council' means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.
- (6) 'Commissioner' means one of the members of a hospital authority appointed in accordance with the provisions of this Part.
- (7) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.
- (8) 'Contract' means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.
- (9) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.
- (10) 'County' means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.
- (11) 'County clerk' and 'chairman of the board of county commissioners' means the clerk and chairman, respectively, of

- the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.
- (12) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.
- (13) 'Government' means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
- (14) 'Hospital authority' means a public body and a body corporate and politic organized under the provisions of this Part.
- (15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.
- (15.1) 'Hospital land' means air and ground rights to real property held either in fee or by lease by a hospital authority, with all easements, rights-of-way, appurtenances, landscaping, and physical amenities such as utilities, parking lots, and garages, but excluding other improvements to land described in G.S. 131E-6(4) and subsection (15) of this section.
- (16) 'Municipality' means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

- (17) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

- (18) 'State' means the State of North Carolina."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law upon approval of the Governor at 3:06 p.m. on the 27th day of June, 1997.

S.B. 393

CHAPTER 234

AN ACT TO MANDATE THE REVOCATION OF A PERSON'S DRIVERS LICENSE OR LIMITED DRIVING PRIVILEGE FOR WILLFUL FAILURE TO COMPLETE COURT-ORDERED COMMUNITY SERVICE AND TO ELIMINATE THE REQUIREMENT FOR JUDICIAL INVOLVEMENT IN THE APPOINTMENT OF COMMUNITY SERVICE COORDINATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179.4 reads as rewritten:

"§ 20-179.4. *Community service alternative punishment; responsibilities of the Department of Crime Control and Public Safety; fee.*

(a) The Department of Crime Control and Public Safety ~~must~~ shall conduct a community service alternative punishment program for persons sentenced under G.S. 20-179(i), (j) or (k).

(b) The Secretary of Crime Control and Public Safety ~~must~~ shall assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service sentence. The appointment of each coordinator shall be made in consultation with ~~and is subject to the approval of~~ the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county.

(c) A fee of one hundred dollars (\$100.00) ~~must~~ shall be paid by all persons serving a community service sentence. That fee ~~must~~ shall be paid to the clerk of court in the county in which the person is convicted. The fee ~~must~~ shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so.

(d) Fees collected under this section ~~must~~ shall be deposited in the general fund.

(e) The coordinator ~~must~~ shall report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. ~~In such cases, the~~ The

court must shall then conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court must shall revoke any limited driving privilege issued in the impaired driving case, case until the community service requirement has been met and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation."

Section 2. G.S. 143B-475.1 reads as rewritten:

"§ 143B-475.1. *Deferred prosecution, community service restitution, and volunteer program.*

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator shall be made in consultation with ~~and is subject to the approval of~~ the chief district court judge in the district to which the coordinator is assigned. Each county must shall provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of one hundred dollars (\$100.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee must shall be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee must shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason must shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee must shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before he pays the fee by the court in which he is convicted; or
- (2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin his community service before the fee is paid by the official or agency representing the State in the agreement.

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary ~~is authorized to~~ may designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section

unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, 'person' includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection ~~must~~ shall be furnished to the individual at the time of assignment of community service work by the community service coordinator.

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works.

(f) The Community Service Staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States Mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least ten days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

Section 3. G.S. 20-17(b) reads as rewritten:

"(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall shall:

- (1) ~~ensure~~ Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his

license pursuant to G.S. 110-142.2 or ~~G.S. 50-13.12~~, G.S. 50-13.12; or

- (2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation."

Section 4. This act becomes effective October 1, 1997, and applies to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law upon approval of the Governor at 3:10 p.m. on the 27th day of June, 1997.

S.B. 142

CHAPTER 235

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS STUDY COMMISSION TO PROVIDE THAT AT LEAST ONE MEMBER OF THE BOARD OF THE NORTH CAROLINA STATE PORTS AUTHORITY BE AFFILIATED WITH A MAJOR EXPORTER OR IMPORTER USING THE STATE PORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-452 reads as rewritten:

"§ 143B-452. *Creation of Authority -- membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.*

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1,

1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

- (1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;
- (2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;
- (3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. At least one member appointed by the Governor shall be affiliated with a major exporter or importer currently using the State Ports. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

- (1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;
- (2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be

appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G.S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. No member of the Authority may participate in any discussion or vote on any matter before the Authority on which the member has a conflict of interest."

Section 2. The member of the Authority representative of businesses using the State Ports, to be appointed by the Governor pursuant to Section 1 of this act, shall be appointed to replace the member of the Authority whose term expires June 30, 1998.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law upon approval of the Governor at 3:15 p.m. on the 27th day of June, 1997.

S.B. 71

CHAPTER 236

AN ACT TO ALLOW SCHOOL BOARDS TO ENTER INTO OPERATIONAL LEASES OF REAL AND PERSONAL PROPERTY FOR USE AS SCHOOL BUILDINGS, FOR THE REVIEW AND APPROVAL OF CERTAIN LEASES BY BOARDS OF COUNTY COMMISSIONERS AND THE LOCAL GOVERNMENT COMMISSION, AND TO MAKE TECHNICAL CORRECTIONS REGARDING THE REVIEW BY THE LOCAL GOVERNMENT COMMISSION OF CERTAIN LEASES, LEASE PURCHASE CONTRACTS, AND INSTALLMENT PURCHASE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-521(d) reads as rewritten:

"(d) Local boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the board: Provided, that the board of education of a local school administrative unit, with the approval of the board of county commissioners, may appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining local school administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of the boards, whereby children from the administrative unit making the appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to the property shall be vested in the local board of education of the county embracing the former special charter district."

Section 2. Article 37 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-530. Operational leases of school buildings and school facilities.

(a) Local boards of education may enter into operational leases of real or personal property for use as school buildings or school facilities. Operational leases for terms of less than three years shall not be subject to the approval of the board of county commissioners. Operational leases for terms of three years or longer, including periods that may be added to the original term through the exercise of options to renew or extend, are permitted if all of the following conditions are met:

- (1) The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation.
- (2) An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the lease for the current fiscal year.
- (3) The leases are approved by a resolution adopted by the board of county commissioners. If an operational lease is approved by the board of county commissioners, in each year the county commissioners shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the lease.
- (4) Any construction, repair, or renovation of the property is in compliance with the requirements of G.S. 115C-521(c) relating to energy guidelines.

For purposes of this section, an operational lease is defined according to generally accepted accounting principles.

(b) Local boards of education may enter into contracts for the repair or renovation of leased property if (i) the budget resolution includes an appropriation authorizing the obligation, (ii) an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year, and (iii) the repair or renovation is in compliance with the requirements of G.S. 115C-521(c) relating to energy guidelines. Contracts for renovation that are subject to the bidding requirements of G.S. 143-129(a) and which do not

constitute continuing contracts for capital outlay must be approved by the board of county commissioners.

(c) Operational leases and contracts entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar (\$500,000) threshold shall apply."

Section 3. G.S. 153A-158.1(d) reads as rewritten:

"(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection ~~or repair~~ of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located."

Section 4. G.S. 115C-528(f) reads as rewritten:

"(f) A contract entered into under this section is subject to Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar (\$500,000) threshold shall apply."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law upon approval of the Governor at 3:20 p.m. on the 27th day of June, 1997.

H.B. 195

CHAPTER 237

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MAKE CLARIFYING CHANGES TO POST-RELEASE SUPERVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes."

Section 2. G.S. 15A-1368(a)(5) reads as rewritten:

"(5) Maximum imposed term. -- The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as

described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment or judgments, less nine months for each of the second and subsequent sentences imposed for Class B through Class E felonies."

Section 3. G.S. 15-196.1 reads as rewritten:

"§ 15-196.1. *Credits allowed.*

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending ~~parole and probation~~ parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that is credited on the term of a previously imposed sentence to which a defendant is subject."

Section 4. G.S. 15-196.3 reads as rewritten:

"§ 15-196.3. *Effect of credit.*

Time creditable under this section shall reduce the minimum and maximum term of a sentence; and, irrespective of sentence, shall reduce the time required to attain privileges made available to inmates in the custody of the State Department of Correction which are dependent, in whole or in part, upon the passage of a specific length of time in custody, including parole or post-release supervision consideration by the ~~State Board of Paroles~~ Post-Release Supervision and Parole Commission. However, nothing in this section shall be construed as requiring an automatic award of privileges by virtue of the passage of time."

Section 5. G.S. 15-196.4 reads as rewritten:

"§ 15-196.4. *Procedures for judicial award.*

Upon sentencing or activating a sentence, the judge presiding shall determine the credits to which the defendant is entitled and shall cause the clerk to transmit to the custodian of the defendant a statement of allowable credits. Upon committing a defendant upon the conclusion of an appeal, or a ~~parole or probation~~ parole, probation, or post-release supervision revocation, the committing authority shall determine any credits allowable on account of these proceedings and shall cause to be transmitted, as in all other cases, a statement of the allowable credit to the custodian of the defendant. Upon reviewing a petition seeking credit not previously allowed, the court shall determine the credits due and forward an order setting forth the allowable credit to the custodian of the petitioner."

Section 6. G.S. 15A-1368.4 reads as rewritten:

"§ 15A-1368.4. *Conditions of post-release supervision.*

(a) In General. -- Conditions of post-release supervision may be reintegrative in nature or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his supervision period revoked for any violation of a controlling condition or

for repeated violation of a reintegrative condition. Compliance with reintegrative conditions may entitle a supervisee to earned time credits as described in G.S. 15A-1368.2(d).

(b) Required Condition. -- The Commission shall provide as an express condition of every release that the supervisee not commit another crime during the period for which the supervisee remains subject to revocation. A supervisee's failure to comply with this controlling condition is a supervision violation for which the supervisee may face revocation as provided in G.S. 15A-1368.3.

(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. -- In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

- (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
- (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.
- (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- (4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.
- (5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(c) Discretionary Conditions. -- The Commission, in consultation with the Division of Adult Probation and Parole, may in its discretion impose conditions on a supervisee it believes reasonably necessary to ensure that the supervisee will lead a law-abiding life or to assist the supervisee to do so.

(d) Reintegrative Conditions. -- Appropriate reintegrative conditions, for which a supervisee may receive earned time credits against the length of the supervision period, and repeated violation that may result in revocation of post-release supervision, are:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the supervisee for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on post-release supervision.
- (4) Support the supervisee's dependents and meet other family responsibilities.

- (5) In the case of a supervisee who attended a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.
- (6) Satisfy other conditions reasonably related to reintegration into society.
- (e) Controlling Conditions. -- Appropriate controlling conditions, violation of which may result in revocation of post-release supervision, are:
 - (1) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the supervisee by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
 - (2) Comply with a court order to pay the costs of reintegrative treatment for a minor and a minor's parents or custodians where the offense involved evidence of physical, mental, or sexual abuse of a minor.
 - (3) Comply with a court order to pay court costs and costs for appointed counsel or public defender in the case for which the supervisee was convicted.
 - (4) Not possess a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or a post-release supervision officer.
 - (5) Report to a post-release supervision officer at reasonable times and in a reasonable manner, as directed by the Commission or a post-release supervision officer.
 - (6) Permit a post-release supervision officer to visit at reasonable times at the supervisee's home or elsewhere.
 - (7) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the post-release supervision officer.
 - (8) Answer all reasonable inquiries by the post-release supervision officer and obtain prior approval from the post-release supervision officer for any change in address or employment.
 - (9) Promptly notify the post-release supervision officer of any change in address or employment.
 - (10) Submit at reasonable times to searches of the supervisee's person by a post-release supervision officer for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

- (11) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.
 - (12) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the supervisee in connection with any judgment rendered by the court.
 - (13) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.
 - (14) Submit to supervision by officers assigned to the Intensive Post-Release Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program.
- (f) Required Supervision Fee. -- The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of twenty dollars (\$20.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

Section 7. G.S. 15A-1368.2(e) is repealed.

Section 8. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 3:53 p.m. on the 27th day of June, 1997.

H.B. 958

CHAPTER 238

AN ACT TO AMEND THE CONCEALED WEAPON AND CONCEALED HANDGUN PERMIT LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

- (1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
- (2) Civil and law enforcement officers of the United States while in the discharge of their official duties;
- (3) Officers and soldiers of the militia and the national guard when called into actual service;
- (4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;
- (5) Sworn law-enforcement officers, when off-duty, if:
 - a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the

- county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and
- b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages."

Section 2. G.S. 14-269.2(g) reads as rewritten:

"(g) This section shall not apply to:

- (1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;
- (1a) A person exempted by the provisions of G.S. 14-269(b);
- (2) Armed forces personnel, officers and soldiers of the militia and national guard, law-enforcement personnel, fire fighters, Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or
- (3) Home schools as defined in G.S. 115C-563(a)."

Section 3. G.S. 14-269.4 reads as rewritten:

"§ 14-269.4. *Weapons on State property and in courthouses.*

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

- (1) ~~Officers and enlisted personnel of the armed forces when in the discharge of their official duties as such and acting under orders requiring them to carry arms and weapons,~~
- (1a) A person exempted by the provisions of G.S. 14-269(b),
- (2) ~~Civil officers of the United States while in the discharge of their official duties,~~
- (3) ~~Officers and soldiers of the militia and the State guard when on duty or called into service,~~
- (4) ~~Officers or employees of the State, or any county, city, or town charged with the execution of the laws of the State, when acting in the discharge of their official duties if authorized by law to carry weapons,~~
- (4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,
- (5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Section 4. G.S. 14-277.2(c) reads as rewritten:

"(c) The provisions of this section shall not apply to a person exempted by the provisions of G.S. 14-269(b) or to persons authorized by State or federal law to carry dangerous weapons in the performance of their duties or to any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place."

Section 5. G.S. 14-415.22 reads as rewritten:

"§ 14-415.22. *Construction of Article.*

This Article shall not be construed to require a person who may carry a concealed handgun under the provisions of G.S. 14-269(b) to obtain a concealed handgun permit. The provisions of this Article shall not apply to a person who may lawfully carry a concealed weapon or handgun pursuant to G.S. 14-269(b). A person who may lawfully carry a concealed weapon or handgun pursuant to G.S. 14-269(b) shall not be prohibited from carrying the concealed weapon or handgun on property on which a notice is posted prohibiting the carrying of a concealed handgun, unless otherwise prohibited by statute."

Section 6. G.S. 14-415.11(c) reads as rewritten:

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or on any other premises premises, except state-owned rest areas or state-owned rest stops along the highways, where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts."

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 4:15 p.m. on the 27th day of June, 1997.

S.B. 765

CHAPTER 239

AN ACT TO REQUIRE LOCAL BOARDS OF EDUCATION TO DEDICATE ADEQUATE FUNDING TO STUDENTS IN ALTERNATIVE SCHOOLS.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 115C-12(24) reads as rewritten:

"(24) Duty to Develop Guidelines for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. -- The State Board of Education shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision.

The State Board of Education shall also adopt guidelines to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee, beginning in December 1996, on the results of this evaluation."

Section 2. The State Board of Education shall report to the Joint Legislative Education Oversight Committee in August 1997 and in March 1998 on the implementation of this act.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1997.

Became law upon approval of the Governor at 4:17 p.m. on the 27th day of June, 1997.

H.B. 746

CHAPTER 240

AN ACT TO DIRECT THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO REVIEW AND ADOPT A

**POLICY REGARDING UNIFORM HIGHER EDUCATION
ADMISSIONS REQUIREMENTS FOR NONPUBLIC SCHOOL
STUDENTS.**

The General Assembly of North Carolina enacts:

Section 1. The Board of Governors of The University of North Carolina shall review the admissions procedures, practices, and requirements of the constituent institutions regarding applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The Board of Governors shall consult with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, while conducting the review.

Section 2. Prior to September 15, 1997, the Board of Governors shall report to the Joint Legislative Education Oversight Committee the results of the review and its recommendations for a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The recommended policy shall take into consideration the results of the review and consultation required under Section 1 of this act.

Section 3. The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school. The Board of Governors shall report the policy to the Joint Legislative Education Oversight Committee prior to November 21, 1997.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 1997.

Became law upon approval of the Governor at 4:17 p.m. on the 27th day of June, 1997.

S.B. 329

CHAPTER 241

**AN ACT TO REPEAL THE REQUIREMENT THAT STATE SAVINGS
BANKS USE THE LETTERS "SSB" OR THE WORDS "SAVINGS
BANK" IN THEIR LEGAL NAME IN ORDER TO CONFORM WITH
THE REQUIREMENTS APPLICABLE TO FEDERAL SAVINGS
BANKS AND TO AMEND THE NORTH CAROLINA RECIPROCAL
INTERSTATE BANKING ACT RELATING TO BANKS ACTING AS
AGENTS FOR DEPOSITORY INSTITUTION AFFILIATES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 54C-8(a) reads as rewritten:

"(a) Nothing in this Chapter shall be construed to invalidate any charter that was valid before the enactment of this Chapter. Any savings banks so chartered on October 1, 1991, may continue operation in accordance with the Chapter under which it was chartered. However, after October 1, 1991, no depository institution may be qualified as a savings bank except in accordance with this Chapter. ~~Any savings bank chartered under this Chapter shall use the letters 'SSB' in its legal name.~~"

Section 2. G.S. 54C-64(3) is repealed.

Section 2.1. G.S. 53-212.1 reads as rewritten:

"§ 53-212.1. *Bank agent for deposit institution affiliate.*

A bank ~~that is a subsidiary of a bank holding company~~ may act as the agent of any depository institution affiliate in receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations, without being deemed a branch of such affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994. An affiliate for the purposes of this section shall include (i) an affiliate as defined in Section 2(k) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841(k)), and (ii) an affiliate as defined in Section 23A(b)(1) of the Federal Reserve Act, as amended (12 U.S.C. § 37c(b)(1)) (but without regard to whether the bank or the affiliate is a member of the Federal Reserve System)."

Section 3. Section 2.1 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 1997, and Section 2 applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 18th day of June, 1997.

Became law upon approval of the Governor at 4:18 p.m. on the 27th day of June, 1997.

H.B. 476

CHAPTER 242

AN ACT TO AMEND THE VITAL RECORDS LAWS PERTAINING TO ACCESS TO, COPIES, AND PUBLIC NATURE OF, AND APPLICATION OF AUTHORIZED FEES, FOR VITAL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-93 reads as rewritten:

"§ 130A-93. *Access to vital records; copies.*

(a) Only the State Registrar shall have access to original vital records and to indices to the original vital records. County offices authorized to issue certificates and the North Carolina State Archives also shall have access to indices to these original vital records, when specifically authorized by the State Registrar.

(b) The following birth data, in any form and on any medium, in the possession of the Department, local health departments, or local register of deeds offices shall not be public records pursuant to Chapter 132 of the General Statutes: the names of children and parents, the addresses of parents (other than county of residence and postal code), and the social

security numbers of parents. Access to copies and abstracts of these data shall be provided in accordance with G.S. 130A-99, Chapter 161 of the General Statutes, and this section. All other birth data shall be public records pursuant to Chapter 132 of the General Statutes. All birth records and data are State property and shall be managed only in accordance with official disposition instructions prepared by the Department of Cultural Resources. The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act. The State Registrar and other officials authorized to issue certified copies of vital records shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and (g), (g) of this section, to any person upon request.

(c) The State Registrar and other officials authorized to issue certified copies of vital records shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and (g), (g) of this section, only to the following:

- (1) A person requesting a copy of the person's own vital records or that of the person's spouse, ~~child, parent, brother or sister;~~ sibling, direct ancestor or descendant, or stepparent or stepchild;
- (2) A person seeking information for a legal determination of personal or property rights; or
- (3) An authorized agent, attorney or legal representative of a person described above.

(c1) A funeral director or funeral service licensee shall be entitled upon request to a certified copy of a death certificate.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-9-107.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for medical research purposes. Copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data, whether the database is maintained by the Department, a local health department, or any other public official, shall be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who will use the information for medical research purposes. The State Registrar shall adopt rules providing for the use of this information for medical research purposes. The rules shall, at a minimum, require a written description of the proposed use of the data, including protocols for protecting confidentiality of the data.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshal.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar. These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. ~~130A-93.1~~, 130A-93.1 and G.S. 161-10.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules."

Section 2. G.S. 130A-93.1 reads as rewritten:

"§ 130A-93.1. *Fees for vital records copies or search; automation fund.*

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

- (1) A fee not to exceed ten dollars (\$10.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars (\$5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.
- (2) A fee not to exceed ten dollars (\$10.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.
- (2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.
- (3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars (\$5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3), (a)(3) of this section."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 1997.

Became law upon approval of the Governor at 4:20 p.m. on the 27th day of June, 1997.

S.B. 1066

CHAPTER 243

AN ACT TO DIRECT THE STATE BOARD OF EDUCATION TO DETERMINE WHICH GROUPS OF STUDENTS ARE LIKELY TO SCORE BELOW BENCHMARKS ON STATEWIDE TESTS AND TO RECOMMEND WAYS TO FOCUS RESOURCES ON ADDRESSING THE NEEDS OF THOSE STUDENTS.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Education shall analyze the results of end-of-grade and end-of-course tests by gender, race, and economic status of students to identify those groups of students who are statistically performing below the State benchmark on these tests. The State Board shall also consider ways to focus resources to address the needs of those students.

The State Board of Education shall report the results of this study to the Joint Legislative Education Oversight Committee prior to November 15, 1998.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 1997.

Became law upon approval of the Governor at 4:25 p.m. on the 27th day of June, 1997.

H.B. 530

CHAPTER 244

AN ACT TO EXEMPT CERTAIN CORPORATIONS WHICH OFFER ENGINEERING SERVICES FROM THE APPLICABILITY OF THE PROFESSIONAL CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-15 reads as rewritten:

"§ 55B-15. *Applicability of Chapter.*

(a) This Chapter shall not apply to the following:

- (1) any A corporation which prior to June 5, 1969, was permitted by law to render professional services as herein defined or to the corporate successor of any such that corporation by merger or otherwise by operation of law, provided there is no substantial change in the direct or indirect beneficial ownership of the shares of such that corporation as the result of such the merger or other transaction; transaction. for For purposes of this section, subdivision, a change of twenty percent (20%) or less shall not be considered substantial.
- (2) A corporation authorized in this State to render primary services governed by Articles 1, 2, 4, or 5 of Chapter 87 of the General Statutes, if the corporation renders services as defined in Chapter 89C of the General Statutes, that are reasonably necessary and connected with the primary services performed by individuals regularly employed in the ordinary course of business by the corporation. The professional services may not be offered,

performed, or rendered independently from the primary services rendered by the corporation. This subdivision does not restrict, limit, or modify the requirement that professional services must be provided by individuals regularly employed in the ordinary course of business by the corporation and duly licensed to render these professional services in this State. Nothing in this subdivision shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between licensees furnishing the professional service and the person receiving the professional service, or the standards of professional conduct applicable to the rendering of the professional service.

~~(b) Any such corporation or successor corporation rendering "professional service" as defined in G.S. 55B-2(6)~~ A corporation or its successor exempt under subsection (a) of this section may be brought within the provisions of this Chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this Chapter and to make the same conform to all of the provisions of this Chapter."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 1997.

Became law upon approval of the Governor at 4:27 p.m. on the 27th day of June, 1997.

H.B. 671

CHAPTER 245

AN ACT TO AMEND THE CHARTER OF THE CITY OF SANFORD AND OTHER LAWS RELATING TO THE CITY BY DELETING THROUGHOUT THE WORDS "BOARD OF ALDERMEN", "BOARD", AND "ALDERMAN" AND SUBSTITUTING, AS APPROPRIATE, THE WORDS "CITY COUNCIL" AND "COUNCIL MEMBER".

The General Assembly of North Carolina enacts:

Section 1. Wherever in any provision of the Charter of the City of Sanford, being Chapter 650 of the 1967 Session Laws, as amended by Chapter 541 of the 1971 Session Laws and Chapter 403 of the 1987 Session Laws, or in any general, local, public-local, special, or private act relating to the City of Sanford the following "Board of Aldermen" or "Board" appear, the same shall be deleted, and the words "City Council" shall be inserted.

Section 2. Wherever in any provision of the Charter of the City of Sanford, being Chapter 650 of the 1967 Session Laws, as amended by Chapter 541 of the 1971 Session Laws and Chapter 403 of the 1987 Session Laws, or in any general, local, public-local, special, or private act relating to the City of Sanford the word "Alderman" appears, the word shall be deleted, and the words "Council Member" shall be inserted.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 685

CHAPTER 246

AN ACT RELATING TO THE DEFINITION OF SUBDIVISION IN HARNETT COUNTY AND THE MUNICIPALITIES WITHIN THAT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-335 reads as rewritten:

"§ 153A-335. 'Subdivision' defined.

For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for widening or opening ~~streets; and streets;~~
- (4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision ~~regulations, regulations; and~~
- (5) The division of land is by any method of transfer among members of a lineal family, which shall include direct lineal descendants (children, grandchildren, and great-grandchildren) and direct lineal ascendants (father, mother, grandfather, and grandmother) and brothers, sisters, nieces, and nephews."

Section 2. G.S. 160A-376 reads as rewritten:

"§ 160A-376. Definition.

For the purpose of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the

standards of the municipality as shown in its subdivision regulations;

- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of ~~streets; and streets;~~
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision ~~regulations; regulations; and~~
- (5) The division of land is by any method of transfer among members of a lineal family, which shall include direct lineal descendants (children, grandchildren, and great-grandchildren) and direct lineal ascendants (father, mother, grandfather, and grandmother) and brothers, sisters, nieces, and nephews."

Section 3. Section 1 of this act applies to Harnett County only. Section 2 of this act applies only to the municipalities wholly within Harnett County.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 710

CHAPTER 247

AN ACT TO INCREASE THE COST LIMIT ON CONSTRUCTION WORK UNDERTAKEN BY THE CITY OF LAURINBURG USING FORCE ACCOUNT QUALIFIED LABOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135 reads as rewritten:

"§ 143-135. *Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty-five thousand dollars (\$125,000)~~ two hundred fifty thousand dollars (\$250,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the

prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

Section 2. This act applies only to the City of Laurinburg.

Section 3. This act is effective when it becomes law and expires June 30, 1999.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 733

CHAPTER 248

AN ACT TO PROVIDE THAT IN FILLING VACANCIES IN THE OFFICE OF REGISTER OF DEEDS, SHERIFF, OR COUNTY COMMISSIONER IN BEAUFORT COUNTY, IF THE VACATING MEMBER WAS A MEMBER OF A POLITICAL PARTY, THE APPOINTING AUTHORITY SHALL APPOINT FROM A LIST RECOMMENDED BY THAT POLITICAL PARTY IF TWO OR MORE NAMES ARE SUBMITTED ON A TIMELY BASIS.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 161-5(a1) reads as rewritten:

"(a1) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds was elected as the nominee a member of a political party, party at the time of the vacancy, the county manager shall notify by first-class mail the county chairman of that political party of the existence of the vacancy. the The board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy, from a list of two or more persons recommended by that committee, if the party makes a recommendation within 30 days of the mailing of the notification. If the list is not so provided, the board of county commissioners shall appoint a person who was registered to vote as a member of that party on the date of the most recent county general election or as of 90 days prior to the vacancy occurring, whichever date was longest ago."

(b) This section applies to Beaufort County only.

Section 2. (a) The second sentence of G.S. 162-5.1 reads as rewritten:

"If the sheriff were elected as a nominee was a member of a political party, party at the time the vacancy occurred, the county manager shall notify by first-class mail the county chairman of that political party of the existence of the vacancy. the The board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county executive committee

~~of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy, and shall appoint from a list of two or more persons recommended by that committee, if the party makes a recommendation within 30 days of the mailing of the notification. If the list is not so provided, the board of county commissioners shall appoint a person who was registered to vote as a member of that party on the date of the most recent county general election or as of 90 days prior to the vacancy occurring, whichever date was longest ago."~~

(b) This section applies to Beaufort County only.

Section 3. (a) G.S. 153A-27.1(d) reads as rewritten:

~~"(d) If the member who vacated the seat was elected as a nominee a member of a political party, party at the time the vacancy occurred, the county manager shall notify by first-class mail the county chairman of that political party of the existence of the vacancy. The board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy, and shall appoint from a list of two or more persons recommended by that committee, if the party makes a recommendation within 30 days of the mailing of the notification. If the list is not so provided, the board of county commissioners shall appoint a person who was registered to vote as a member of that party on the date of the most recent county general election or as of 90 days prior to the vacancy occurring, whichever date was longest ago."~~

(b) This section applies to Beaufort County only.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 67

CHAPTER 249

AN ACT TO REDEFINE THE CORPORATE LIMITS OF THE TOWN OF SUMMERFIELD, AND CONCERNING THE TOWN OF LELAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of the Charter of the Town of Summerfield, being Chapter 426, Session Laws of 1995 as rewritten by Chapter 2 of the Session Laws, Second Extra Session of 1996 reads as rewritten:

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law the boundaries of the Town of Summerfield are as follows:

~~BEGINNING at the intersection of the western edge of United States Highway 220 and the middle of the Haw River; Thence in a generally western direction following the middle of the Haw River To the Bruce Township Line.~~

~~Thence south along the Bruce Township Line to the intersection with the corner of Guilford County Tax Map ACL-10-654, Block 1038, Lot 4.~~

~~Thence in a generally eastern direction along the northern boundary of Lot 4.~~

~~Thence in a generally southern direction along the eastern line of Lots 4 and 54, and Guilford County Tax Map ACL-10-654, Block 1037, Lots 14 and 15 to the intersection of the northern boundary of Lot 2.~~

~~Thence in a generally eastern direction along the northern boundary of Lot 2, and Guilford county Tax Map ACL-10-654, Block 984, Lot 6 and Lot 4 until reaching a point on the western edge of Belford Road.~~

~~Thence in a generally northern direction along the western edge of Belford Road to a point due west of the intersection of the southern corner of Guilford County Tax Map ACL-10-654, Block 983, Lot 33.~~

~~Thence in generally northern direction to and following the southern and eastern boundaries of Lot 33 to the southern most line of Lot 18.~~

~~Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map ACL-10-654, Block 983, Lots 18, 17, and 4.~~

~~Thence in a generally southern direction along the western boundary of Guilford County Tax Map ACL-10-654, Block 983, Lot 2.~~

~~Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map 10-654, Block 983, Lots 2, 31, 21, and 36.~~

~~Thence generally north along the eastern boundary of Lot 36 until reaching a point on the southern edge of Highway 150.~~

~~Thence east following the southern edge of Highway 150 to the intersection of Guilford County Tax Map 10-654 Block 972, Lot 1.~~

~~Thence generally south then east and then north following the boundaries of Lot 1.~~

~~Thence east following Highway 150 to the western boundary of Guilford County Tax Map 10-654, Block 972, Lot 15.~~

~~Thence south along the western boundaries of Lots 15 and 21.~~

~~Thence east along the southern boundary of Lot 21.~~

~~Thence south along the western boundary of Lot 18.~~

~~Thence generally east following the southern boundary of Lots 18, 17, and 20.~~

~~Thence generally north along the eastern boundary of Lots 20 and 11 until the intersection with the southern boundary of Lot 3.~~

~~Thence generally north east along the southern boundary of Lot 3 and generally east along the southern boundary of Lot 13 until reaching a point on the western edge of Brookbank Road.~~

~~Thence generally north following the western edge of Brookbank Road until a point on the southern edge of Highway 150.~~

~~Thence generally east along the southern edge of Highway 150 to the intersection of the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 66.~~

~~Thence generally southeast, then northeast and then northwest along the boundaries of Lot 66 to a point on the southern side of Highway 150.~~

~~Thence generally east along the southern edge of Highway 150 to the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 35.~~

~~Thence generally south along the western boundary of Lot 35.~~

~~Thence generally east along the southern boundary of Lots 35, 16, and 14 to the western boundary of Lot 32.~~

~~Thence south along the western boundary of Lot 32.~~

~~Thence generally east along the southern boundaries of Lots 32, 33, and 6 to a point on the eastern edge of Trinity Church Road at the western intersection of Lots 55 and 15.~~

~~Thence generally south along the western boundary of Lot 15; thence east on the southern boundary of Lot 15, thence south on the western boundary of Lots 34 & 59.~~

~~Thence generally east along the southern boundary of Lot 59.~~

~~Thence generally south along the eastern boundary of Lot 13 until reaching the northern most edge of Centerfield Road.~~

~~Thence generally east until the intersection of State Road 2120.~~

~~Thence generally southwest along State Road 2120 to the intersection of Greenlawn Drive.~~

~~Thence along Greenlawn Drive to the intersection of the G.S. Miles Subdivision line.~~

~~Thence west on northern boundary of G.S. Miles and south along the western boundary following the western boundary of the G.S. Miles Subdivision until reaching the northern boundary of Guilford County Tax Map ACL-1-35, Block 905, Lot 10.~~

~~Thence west following the northern boundary of Lot 10 and then generally south following the western boundaries of Lots 10, 9, 82, 41, 11, and 46.~~

~~Thence east along the southern boundary of Lot 46 to the western edge of Pleasant Ridge Road.~~

~~Thence south following the western edge of Pleasant Ridge Road until reaching the northern boundary of Lot 44.~~

~~Thence generally west along the northern boundary of Lot 44.~~

~~Thence south along the western boundaries of Lots 44 and 63.~~

~~Thence east along the southern boundary of Lot 63 until reaching the eastern edge of Pleasant Ridge Road.~~

~~Thence south along the eastern edge of Pleasant Ridge Road until reaching the southern boundary of the A. J. Norman Subdivision.~~

~~Thence east along the southern boundary of the A. J. Norman subdivision and Guilford County Tax Map ACL-1-35, Block 905, Lot 47 to the western boundary of Guilford Tax Map ACL-1-35, Block 905, Lot 21.~~

~~Thence south, then east and then north along the boundaries of Lot 21.~~

~~Thence east along the southern boundary of Lots 19, 51, 2, and 52 and continuing due east until reaching a point on the eastern edge of Summerfield Road.~~

~~Thence south along the eastern edge of Summerfield road to a point on the western edge of United States Highway 220.~~

~~Thence generally north along the western edge of Highway 220 to a point due west of the southern boundary of Guilford County Tax Map ACL-1-35, Block 852, Lot 21; thence generally east to and along the southern boundary of Lot 21; thence north along the eastern boundary to a point on the northern edge of North Carolina Highway 150 that is due north of the point of the intersection with North Carolina Highway 150.~~

Thence east along the northern edge of Highway 150 to the intersection of Stradder road. Thence north along the western edge of Stradder road to the intersection of Scalesville road. Thence generally west to the intersection with Highway 220. Thence generally north along the western boundary of Highway 220 to the intersection of the Haw River and the point of beginning.

Beginning at the intersection of the middle of Highway U.S. 220 North and the northern bank of the Haw River:

Thence in a generally western direction following the northern bank of the Haw River to the intersection of the Stokesdale, North Carolina town limit line;

Thence in a generally western direction following the Stokesdale, North Carolina town limit line until reaching the intersection with the Bruce Township Line;

Thence generally south following the Bruce Township Line until reaching the intersection with the northern edge of Bunch Road;

Thence in a generally southeast direction following the northern edge of Bunch Road to a point due north of the eastern intersection with Northwest School Road;

Thence south crossing Bunch Road then generally south following the eastern edge of Northwest School Road to the western-most intersection of Guilford County Tax Map ACL 10-652 Block 1034 Lot 1;

Thence generally southeast along the southwestern boundaries of Lot 1 and Guilford County Tax Map ACL 10-652 Block 987 Lot 8 and the western boundary of Lot 2;

Thence generally east along the southern boundary of Lot 2, then generally north along the eastern boundary of Lot 2 until reaching the intersection of the northern boundary of Guilford County Tax Map ACL 10-650 Block 988 Lot 12;

Thence generally east, then generally south, following the boundaries of Lot 12 and the western boundaries of Lots 26, 25, and 14 until reaching the intersection of the corner of Lot 14 and the southern boundary of Lot 12;

Thence generally east along the southern boundary of Lot 14 to the intersection with the western boundary of Lot 6;

Thence generally south along the western boundary of Lot 6 until reaching the intersection with the northern edge of Pleasant Ridge Road;

Thence generally east along the northern edge of Pleasant Ridge Road until reaching a point due north of the intersection with the eastern edge of Fleming Road;

Thence south crossing Pleasant Ridge Road, then generally southeast along the northeast edge of Fleming Road until reaching a point due east of the northern boundary of Guilford County Tax Map ACL 10-650 Block 967 Lot 88;

Thence west crossing Fleming Road, then generally southwest along the northern boundary of Lot 88, then generally south along the western boundaries of Lots 88 and 32, then generally east along the southern boundary of Lot 32 to the western edge of Fleming Road;

Thence generally northwest along the western edge of Fleming Road to a point due west of the common intersection of Fleming Road, Lot 19, and Lot 78;

Thence east crossing Fleming Road, then generally north, then generally east, then generally southeast, and then generally southwest following the boundaries of Lot 78 to the intersection with the eastern edge of Fleming Road;

Thence generally southeast along the eastern edge of Fleming Road until reaching a point due east of the northern boundary of Lot 1;

Thence west crossing Fleming Road, then generally southwest along the northern boundary of Lot 1, then generally southeast, then generally northeast along the boundary of Lot 1, then due east crossing Fleming Road until reaching a point on the northeast edge of Fleming Road;

Thence generally southeast along the northeast edge of Fleming Road until reaching the intersection of the western boundary of Lot 6;

Thence generally northeast, then generally east, then generally south following the boundaries of Lot 6 until reaching a point on the northeast edge of Fleming Road;

Thence generally southeast along the northeast edge of Fleming Road until reaching the intersection with Lot 14;

Thence generally northeast, then generally southeast, then generally southwest following the boundaries of Lot 14 until reaching a point on the northeast edge of Fleming Road;

Thence generally southeast along the northeast edge of Fleming Road until reaching the southeast boundary of Lot 4;

Thence generally northeast along the southeast boundary of Lot 4;

Thence generally east along the southern boundary of Guilford County Tax Map ACL-1-33 Block 922 Lot 26;

Thence generally north along the western boundary of the M. E. Tumbleson Subdivision until intersecting with the western edge of Long Valley Road;

Thence generally north along the western edge of Long Valley Road until reaching a point on the northern edge of Pleasant Ridge Road due north of the intersection of Long Valley Road;

Thence generally northeast along the north western edge of Pleasant Ridge Road until reaching a point due east of the southern boundary of Guilford County Tax Map ACL-1-33 Block 921 Lot 37;

Thence east crossing Pleasant Ridge Road, then generally east along the southern boundary of Lots 37 and 25 to the intersection with the western boundary of lot 27, then generally south along the western boundary of Lots 27 and 28 and the western boundaries of Block 902 Lots 33, 35, 37 and 38 until intersecting with the Greensboro City Limits;

Thence following the Greensboro City Limit line generally east, then generally south, then generally southeast to the southern boundary of Block 901 Lot 7;

Thence following along the boundary of Lakes Higgins and Brandt and Reedy Fork Creek (the existing Greensboro City limits) in a generally northeastern, then generally western, then generally northern, then

generally eastern direction until reaching the intersection of the southern boundary of Guilford County Tax Map ACL-1-35 Block 853 Lot 6;

Thence generally southeast following the boundary of Lot 6 to the intersection with Lot 24;

Thence generally south along the western boundary of Lot 24, then generally northeast following the southeastern boundary of Lot 24 to a point on the western edge of Highway 220 North and continuing due east until reaching a point on the eastern edge of U.S. Highway 220 North;

Thence generally south following the eastern edge of U.S. Highway 220 North until reaching the southern boundary of Lot 17;

Thence generally east along the southern boundary of Lot 17 to the boundary of Lot 2;

Thence generally southeast along the boundary of Lot 2 to the intersection with the Greensboro City Limits;

Thence generally east following the Greensboro City Limits until reaching the intersection with the western boundary of Guilford County Tax Map ACL 6-356 Block 772N, Lot 3;

Thence generally north on the western boundary of Lots 3 and 4 to the intersection of the boundary line of Guilford county Tax Map ACL 6-354, Block 721S Lot 1;

Thence following the boundaries of Lot 1 generally west, then generally north, then generally east, then generally north, then generally east to the intersection of the western boundary of Guilford County Tax Map ACL 6-356 Block 773, Lot 8;

Thence generally south then generally east following the boundaries of Lot 8 to the western boundary of Lot 9;

Thence generally south then generally east following the boundaries of Lot 9 to a point on the western edge of Lake Brandt Road;

Thence due east crossing lake Brandt Road then generally south following the eastern edge of Lake Brandt Road to the intersection of the northern edge of Plainfield Road;

Thence generally east along the northern edge of Plainfield Road to a point due north of the western boundary of Guilford County Tax Map ACL-6-656, Block 720 Lot 8;

Thence south crossing Plainfield Road, then generally south, then generally east, then generally north along the boundary of Lot 8 to the southern boundary of Lot 16;

Thence generally east, then generally north, along the boundaries of Lot 16 and generally north along the eastern boundary of Lot 13 to a point on the southern edge of Plainfield Road;

Thence generally east along the southern edge of Plainfield Road to the western boundary of Lot 11;

Thence generally south, then generally east, and then generally north following the boundaries of Lot 11 and continuing generally north along the western boundary of Lot 6, then crossing Plainfield Road and continuing generally north on the western boundary of Lot 7;

Thence generally west along the northern boundary of Lot 7 to the intersection with the eastern boundary of lot 10;

Thence generally north, then generally west, then generally north, then generally west following the boundaries of Lot 10 and continuing generally west along the northern boundary of Block 733 Lot 1;

Thence generally north, then generally west along the boundary of Lot 6 until reaching a point due south of the western boundary of Block 774 Lot 38;

Thence due north and continuing generally north following the eastern boundary of Lots 38, 36, 62, 14 and 16 and continuing due north until reaching a point on the northern edge of North Carolina Highway 150;

Thence generally east along the northern edge of North Carolina Highway 150 until reaching a point due north of the eastern edge of the intersection of Bar-mot Drive;

Thence south crossing North Carolina Highway 150, then generally south along the eastern edge of Bar-mot Drive until reaching a point due north of the intersection of the western boundary of Block 719 Lot 28 and Bar-Mot Drive;

Thence generally south crossing Bar-Mot Drive, then generally south along the western boundary of Lot 28, then generally east, then generally north along the boundaries of Lot 28, then due north until reaching a point on the northern edge of Bar-mot Drive;

Thence generally east along Bar-mot Drive, then generally north along the eastern boundary of Lot 21, then generally east along the southern boundary of Lot 11, then generally north along the eastern boundary of Lot 11, then generally northeast along the northern boundary of Lot 10, then generally south along the eastern boundary of Lot 10, then generally east along the southern boundary of Guilford County Tax Map ACL-6-358 Block 718 Lot 2;

Thence generally north along the eastern boundary of Lot 2 then crossing Highway 150 and continuing generally north on the eastern boundary of Lot 11;

Thence generally west along the northern boundaries of Lots 11, 12 and 8, then generally south along the western boundary of Lot 8, then generally west along the northern boundary of Lot 23 and continuing generally west until reaching and following the northern boundary of Lot 22, then generally south along the western boundary of Lots 22 and 17, then generally southeast along the southern boundary of Lot 17 until reaching a point on the western edge of North Carolina Highway 150;

Thence generally south along the western edge of North Carolina Highway 150 until reaching the northern boundary of Block 719 Lot 8;

Thence generally west along the northern boundary of Lot 8 and continuing generally west along the northern boundary of Lots 14, 13, and 1 until reaching the eastern boundary of Guilford County Tax Map ACL-6-356 Block 774 Lot 9;

Thence generally north along the eastern boundary of Lot 9, then generally west along the northern boundaries of Lots 9, 65, 64, 45, 46 and 10 and then continuing due west to a point on the western edge of Lake Brandt Road;

Thence generally north along the western edge of Lake Brandt Road until reaching the intersection with the northern bank of the Haw River;

Thence generally west following the northern bank of the Haw River to the point of beginning at the intersection with the middle of U.S. Highway 220 North.

In addition, the boundaries of the Town of Summerfield include the following:

I. Polo Farms and Adjoining Property:

- (1) Polo Farms Subdivision: Beginning at a right-of-way monument in the eastern margin of S.R. 2321 (Strawberry Road), being the northernmost point of the land of T.L. Alley and a common corner of T.L. Alley and Robert C. Lock, thence, with the eastern margin of S.R. 2321 the following courses and distances: N. $62^{\circ}18'$ E. 191.96 ft.; N. $55^{\circ}02'$ E. 205.76 ft.; N. $47^{\circ}00'$ E. 184.82 ft.; N. $39^{\circ}09'$ E. 224.75 ft. to a right-of-way monument; N. $29^{\circ}06'$ E. 482.21 ft. to a concrete monument; N. $27^{\circ}30'$ E. 599.90 ft.; N. $27^{\circ}55'$ E. 60.33 ft.; N. $30^{\circ}14'$ E. 484.52 ft.; N. $33^{\circ}35'$ E. 250.85 ft. to an existing iron pin in the eastern margin of S.R. 2321; thence N. $38^{\circ}32'$ E. 21.05 ft. to an existing iron pin; thence S. $56^{\circ}08'$ E. 244.55 ft. to an existing iron pin; thence S. $89^{\circ}28'$ E. 424.88 ft. to an existing iron pin in the line of Alvin G. Wall; thence with the line of Wall the following courses and distances: S. $10^{\circ}16'$ W. 183.99 ft.; S. $10^{\circ}17'$ W. 85.24 ft.; S. $35^{\circ}02'$ W. 145.77 ft.; thence N. $84^{\circ}19'$ E. 1414.31 ft. to an existing iron pin in the eastern edge of a 60 ft. right-of-way for S.R. 2322 (Alley Road); thence N. $7^{\circ}31'$ E. 168.4 ft. to an existing iron pin, the southwest corner of Benjamin C. Alley; thence with Benjamin C. Alley's south line N. $88^{\circ}48'$ E. 1062.67 ft. to an existing iron pin, said Alley's southeast corner; thence N. $00^{\circ}56'$ W. 230 ft. to an existing iron pin in the line of Lunsford Richardson; thence with the line of Richardson S. $82^{\circ}07'$ E. 1009.08 ft. to a new iron pin; thence N. $84^{\circ}45'$ E. 1439.45 ft. to a new iron pin; thence S. $12^{\circ}21'$ E. 332.5 ft. to an existing iron pin in the centerline of S.R. 2323; thence on the same bearing 2331.0 ft. to an existing iron pin in the line of the City of Greensboro; thence with the line of the City of Greensboro the following courses and distances: N. $89^{\circ}02'$ W. 400.04 ft.; N. $89^{\circ}02'$ W. 399.96 ft.; N. $10^{\circ}28'$ E. 449.82 ft.; N. $67^{\circ}32'$ W. 299.84 ft.; S. $25^{\circ}58'$ W. 515.95 ft.; S. $84^{\circ}08'$ W. 1244.80 ft.; N. $79^{\circ}30'$ W. 530.25 ft.; N. $89^{\circ}12'$ W. 407.88 ft.; S. $00^{\circ}36'$ W. 259.88 ft.; S. $62^{\circ}04'$ W. 599.50 ft.; S. $69^{\circ}15'$ W. 1294.14 ft.; N. $33^{\circ}48'$ W. 658.12 ft.; S. $85^{\circ}59'$ W. 1076.52 ft.; N. $64^{\circ}55'$ W. 652.26 ft. to an existing iron pin, the southeastern corner of T. L. Alley; thence with the eastern line of T. L. Alley N. $09^{\circ}37'$ W. 312.83 ft. to an existing iron pin; thence N. $48^{\circ}40'$ W. 442.87 ft. to a right-of-way monument in the eastern margin of S.R. 2321, the Point of Beginning.
- (2) William W. Dick & Teresa F. Dick property of 6.12 acres recorded at Deed Book, 3185, page 637 and Deed Book 3717, page 1330.
- (3) Alice B. Dick property consisting of approximately 11 acres, recorded at Deed Book 1295, page 594.

II. Hillsdale Lake Community:

- (1) Lona T. Long and Others Subdivision Plat Book 108, page 40, Lots 1, 2, and 3.
- (2) Lona T. Long Subdivision Plat Book 90, page 25, Lots 5, 6, 7, and 8.
- (3) Lona T. Long Heirs Property, Tax Map 839, Lot 7.
- (4) Lona T. Long Subdivision Plat Book, 85, page 105.
- (5) Lots 1 through 104 of the Hillsdale Lake Subdivision, recorded in Plat Book 27, pages 8 and 17, Plat Book 26, page 55, Plat Book 28, page 29, Plat Book 32, page 27, and Plat Book 72, page 372.
- (6) Gene B. Lickel Subdivision Plat Book 43, Page 63, Lots 1, 2, 3, and 4. III. Rayle Heights: Tax Lots 3, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, 18, 19, 20, 22, 26, 27, 28, 29, 32, 33, 34."

Section 1.1. (a) The corporate limits of the Town of Leland are extended to include the following described tract of land:

Being a tract of land located in Town Creek Township, Brunswick County, North Carolina, and being more fully described as follows:

Beginning at a Right-of-Way Monument, in the northern Right-of-Way of US 17, said monument being located on the south side of a gate leading into the property, as shown on a map titled "THE GREGORY POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994; thence with said Right-of-Way South 54 degrees 56 minutes 00 seconds West, a distance of 1111.44 feet; thence leaving said Right-of-Way North 45 degrees 36 minutes 40 seconds West, a distance of 272.41 feet; thence North 45 degrees 36 minutes 08 seconds West, a distance of 2493.87 feet; thence North 45 degrees 35 minutes 59 seconds West, a distance of 1124.67 feet; thence North 48 degrees 44 minutes 35 seconds West, a distance of 1849.91 feet; thence South 78 degrees 10 minutes 46 seconds West, a distance of 793.76 feet; thence North 66 degrees 50 minutes 57 seconds West, a distance of 1282.45 feet to a point in SR 1438 (Lanvale Road); thence North 11 degrees 09 minutes 18 seconds West, a distance of 344.20 feet to a point in the centerline of Lanvale Road thence with said centerline North 07 degrees 08 minutes 13 seconds West, a distance of 690.45 feet; thence North 06 degrees 46 minutes 34 seconds West, a distance of 441.28 feet; thence North 09 degrees 45 minutes 03 seconds West, a distance of 128.86 feet; thence North 14 degrees 28 minutes 52 seconds West, a distance of 124.97 feet; thence North 19 degrees 35 minutes 26 seconds West, a distance of 150.19 feet; thence North 26 degrees 13 minutes 01 seconds West, a distance of 150.04 feet; thence North 32 degrees 26 minutes 42 seconds West, a distance of 178.45 feet; thence North 36 degrees 09 minutes 42 seconds West, a distance of 237.57 feet; thence North 36 degrees 09 minutes 33 seconds West, a distance of 187.40 feet; thence North 36 degrees 08 minutes 44 seconds West, a distance of 246.56 feet; thence North 36 degrees 09 minutes 33 seconds West, a distance of 198.67 feet; thence North 35 degrees 57 minutes 10 seconds West, a distance of 188.63 feet; thence North 35 degrees 22 minutes 08 seconds West, a distance of 52.73 feet; thence North 30 degrees 54 minutes 08 seconds West, a distance of 193.58 feet; thence North 24 degrees 37 minutes 51 seconds West, a distance of 239.60 feet; thence leaving said centerline and with Sturgeon Branch North 72 degrees 40 minutes 07

seconds East, a distance of 30.21 feet; thence North 72 degrees 59 minutes 08 seconds East, a distance of 150.37 feet; thence North 15 degrees 10 minutes 23 seconds East, a distance of 242.76 feet; thence North 84 degrees 23 minutes 02 seconds East, a distance of 141.02 feet; thence North 55 degrees 24 minutes 41 seconds East, a distance of 313.03 feet; thence North 40 degrees 17 minutes 58 seconds East, a distance of 94.28 feet; thence North 03 degrees 42 minutes 18 seconds West, a distance of 48.90 feet; thence North 89 degrees 55 minutes 04 seconds East, a distance of 138.95 feet; thence North 63 degrees 52 minutes 03 seconds East, a distance of 108.98 feet; thence North 41 degrees 05 minutes 41 seconds East, a distance of 227.03 feet; thence North 36 degrees 48 minutes 37 seconds East, a distance of 204.72 feet; thence North 48 degrees 24 minutes 27 seconds East, a distance of 120.97 feet to a point in the run of Rice Branch thence with said branch South 51 degrees 13 minutes 24 seconds East, a distance of 35.93 feet; thence South 89 degrees 20 minutes 59 seconds East, a distance of 106.00 feet; thence North 88 degrees 41 minutes 14 seconds East, a distance of 231.37 feet; thence South 63 degrees 01 minutes 01 seconds East, a distance of 72.07 feet; thence South 30 degrees 31 minutes 05 seconds East, a distance of 88.34 feet; thence North 55 degrees 02 minutes 25 seconds East, a distance of 68.06 feet; thence South 83 degrees 07 minutes 08 seconds East, a distance of 75.12 feet; thence South 53 degrees 08 minutes 14 seconds East, a distance of 49.51 feet; thence South 37 degrees 05 minutes 03 seconds East, a distance of 77.72 feet; thence North 46 degrees 14 minutes 12 seconds East, a distance of 56.82 feet; thence South 50 degrees 58 minutes 00 seconds East, a distance of 39.22 feet; thence South 06 degrees 18 minutes 38 seconds West, a distance of 73.24 feet; thence South 17 degrees 06 minutes 48 seconds East, a distance of 38.30 feet; thence South 63 degrees 48 minutes 32 seconds East, a distance of 58.91 feet; thence North 45 degrees 05 minutes 05 seconds East, a distance of 170.10 feet; thence South 25 degrees 36 minutes 41 seconds East, a distance of 133.07 feet; thence South 08 degrees 55 minutes 12 seconds West, a distance of 56.18 feet; thence North 73 degrees 37 minutes 44 seconds East, a distance of 70.25 feet; thence South 09 degrees 39 minutes 11 seconds East, a distance of 54.37 feet; thence North 77 degrees 45 minutes 53 seconds East, a distance of 54.74 feet; thence South 65 degrees 56 minutes 51 seconds East, a distance of 118.51 feet; thence North 51 degrees 52 minutes 28 seconds East, a distance of 113.22 feet; thence South 85 degrees 54 minutes 21 seconds East, a distance of 72.82 feet; thence North 35 degrees 31 minutes 42 seconds East, a distance of 74.71 feet; thence South 80 degrees 09 minutes 57 seconds East, a distance of 94.27 feet; thence North 67 degrees 59 minutes 19 seconds East, a distance of 103.53 feet; thence South 22 degrees 55 minutes 29 seconds East, a distance of 82.62 feet; thence North 45 degrees 55 minutes 16 seconds East, a distance of 67.70 feet; thence South 37 degrees 17 minutes 37 seconds East, a distance of 68.76 feet; thence North 53 degrees 44 minutes 53 seconds East, a distance of 58.17 feet; thence North 12 degrees 52 minutes 59 seconds West, a distance of 38.98 feet; thence South 89 degrees 48 minutes 15 seconds East, a distance of 58.32 feet; thence North 58 degrees 19 minutes 43 seconds East, a distance of 93.90 feet; thence South 63

degrees 38 minutes 13 seconds East, a distance of 47.06 feet; thence South 37 degrees 24 minutes 09 seconds East, a distance of 54.13 feet; thence North 43 degrees 32 minutes 32 seconds East, a distance of 90.22 feet; thence North 83 degrees 55 minutes 19 seconds East, a distance of 54.78 feet; thence South 82 degrees 53 minutes 15 seconds East, a distance of 66.22 feet; thence North 45 degrees 30 minutes 43 seconds East, a distance of 102.03 feet; thence North 73 degrees 09 minutes 53 seconds East, a distance of 138.11 feet; thence North 20 degrees 04 minutes 19 seconds West, a distance of 80.59 feet; thence North 36 degrees 34 minutes 12 seconds East, a distance of 51.79 feet; thence North 34 degrees 47 minutes 49 seconds East, a distance of 76.72 feet; thence North 08 degrees 06 minutes 25 seconds East, a distance of 122.32 feet; thence North 71 degrees 30 minutes 52 seconds East, a distance of 75.69 feet; thence North 20 degrees 40 minutes 01 seconds West, a distance of 68.51 feet; thence North 61 degrees 42 minutes 35 seconds East, a distance of 93.25 feet; thence leaving said branch South 20 degrees 33 minutes 06 seconds East, a distance of 291.98 feet; thence South 20 degrees 32 minutes 17 seconds East, a distance of 534.90 feet; thence North 41 degrees 38 minutes 26 seconds East, a distance of 242.33 feet; thence North 53 degrees 43 minutes 59 seconds East, a distance of 347.56 feet; thence North 51 degrees 33 minutes 50 seconds East, a distance of 241.30 feet; thence North 67 degrees 45 minutes 59 seconds East, a distance of 681.05 feet; thence North 70 degrees 01 minutes 48 seconds East, a distance of 563.93 feet; thence South 53 degrees 07 minutes 47 seconds East, a distance of 1460.15 feet; thence South 05 degrees 55 minutes 43 seconds East, a distance of 3955.76 feet; thence South 05 degrees 56 minutes 16 seconds East, a distance of 830.35 feet; thence South 05 degrees 55 minutes 43 seconds East, a distance of 20.52 feet; thence South 89 degrees 43 minutes 05 seconds West, a distance of 1015.93 feet; thence South 02 degrees 20 minutes 58 seconds West, a distance of 943.79 feet; thence South 01 degrees 12 minutes 44 seconds West, a distance of 822.48 feet; thence South 84 degrees 06 minutes 28 seconds East, a distance of 1876.12 feet; thence South 35 degrees 07 minutes 22 seconds East, a distance of 277.41 feet; thence South 34 degrees 55 minutes 00 seconds East, a distance of 155.49 feet; thence South 34 degrees 41 minutes 11 seconds east, a distance of 373.23 feet; to a point in the northern Right-of-Way of US HWY 17; thence with said right-of-way South 54 degrees 55 minutes 59 seconds West, a distance of 397.20 feet; thence South 50 degrees 44 minutes 34 seconds West, a distance of 170.35 feet; thence South 52 degrees 40 minutes 24 seconds West, a distance of 60.36 feet; to the Point of Beginning, containing 893.64 acres, and being tract "A" as shown on a map titled "THE GREGORY POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994.

(b) The corporate limits of the area annexed by this section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes, except they are excluded in any calculations made under G.S. 160A-58.1(b)(5). The corporate limits of the area annexed by this section are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the town.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

Section 2. This act becomes effective June 30, 1997, except that Section 1.1 of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 549

CHAPTER 250**AN ACT TO EXCHANGE TRACTS OF LAND BETWEEN THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE AND THE TOWN OF BILTMORE FOREST.**

The General Assembly of North Carolina enacts:

Section 1. All of the area included in the following property description is hereby removed from the corporate limits of the Town of Biltmore Forest and added to the corporate limits of the City of Asheville: That certain tract of land located in Biltmore Forest Township, Buncombe County, North Carolina, and more particularly described as follows:

BEGINNING at an iron pipe set in the Southern margin of the right-of-way of I-40, said iron pipe being located North 77 degrees 31 minutes 5 seconds East 349.07 feet from a right-of-way monument with Grid Coordinates of N=676831.46, E=945825.03 (N.A.D. 1927); thence from said established BEGINNING point along the new municipal line between the City of Asheville and the Town of Biltmore Forest, the following eighteen calls: South 25 degrees 32 minutes 3 seconds East 17 feet to an iron pipe set; South 28 degrees 7 minutes 1 second East 65.72 feet to an iron pipe set; South 28 degrees 27 minutes 55 seconds East 89.48 feet to an iron pipe set; South 21 degrees 54 minutes 35 seconds East 43.19 feet to an iron pipe set; South 18 degrees 56 minutes 21 seconds East 43.05 feet to an iron pipe set; South 21 degrees 33 minutes 58 seconds East 97.71 feet to an iron pipe set; South 25 degrees 19 minutes 59 seconds East 90.57 feet to an iron pipe set; South 23 degrees 41 minutes 33 seconds East 60.32 feet to an iron pipe set; South 27 degrees 46 minutes 19 seconds East 54.22 feet to an iron pipe set; South 29 degrees 52 minutes 23 seconds East 82.15 feet to an iron pipe set; South 42 degrees 6 minutes 19 seconds East 40.47 feet to an iron pipe set; South 42 degrees 37 minutes 5 seconds East 88.97 feet to an iron pipe set; South 37 degrees 3 minutes 52 seconds East 36.70 feet to an iron pipe set; South 36 degrees 8 minutes 48 seconds East 48.80 feet to an iron pipe set; South 28 degrees 12 minutes 2 seconds East 32.52 feet to an iron pipe set; South 20 degrees 56 minutes 24 seconds East 46.30 feet to an iron pipe set; South 31 degrees 28 minutes 47 seconds East 26.44 feet to an iron pipe set; and on a curve to the right in a Southeasterly direction with a radius of 651.99 feet, a chord of South 51 degrees 22 minutes 50 seconds East 279.94 feet and an arc distance of 282.13 feet to an iron pipe set; thence along the former municipal line between the City of Asheville and the Town of Biltmore Forest, North 5 degrees 0 minutes 48 seconds East 834.86 feet

to an existing iron pin in the Southern margin of the right-of-way of I-40; thence along the Southern margin of the right-of-way of I-40 (marked by a right-of-way fence), the following five calls: North 45 degrees 19 minutes 19 seconds West 16.05 feet to a right-of-way monument; North 56 degrees 36 minutes 52 seconds West 394.89 feet to a right-of-way monument; south 89 degrees 10 minutes 19 seconds West 181.75 feet to a right-of-way monument; South 79 degrees 25 minutes 40 seconds West 185.49 feet to a right-of-way monument; and South 77 degrees 31 minutes 5 seconds West 47.71 feet to the point of BEGINNING, containing 10.1638 acres, more or less, and being Tract A on a survey by John B. Young, R.L.S., entitled "Property Exchange Map for the Town of Biltmore Forest and the City of Asheville", dated March 4, 1997, and designated as Job File Number 90086-D-591, reference to said survey being made in aid of description.

Section 2. Section 1 of this act shall have no effect upon the validity of any liens of the Town of Biltmore Forest for ad valorem taxes on special assessments that have attached prior to the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Biltmore Forest.

Section 3. The City of Asheville shall initiate proceedings within 60 days from the date of this act to zone the tract described in Section 1 of this act to an appropriate classification within the City of Asheville's zoning ordinance.

Section 4. All of the area included in the following property description is hereby removed from the corporate limits of the City of Asheville and added to the corporate limits of the Town of Biltmore Forest: That certain tract or parcel of land located in Asheville Township, Buncombe County, North Carolina, and more particularly described as follows:

BEGINNING at a point with Grid Coordinates of N=674912.28, E=947286.02 (N.A.D. 1927) and marking the Northernmost corner of Lot O as shown on plat recorded in Plat Book 2, at Page 39, of the Buncombe County, NC Register's Office, said point also marking the terminus of the second call known as Boundary Station 1 recorded in Deed Book 244, at Page 56, of the Buncombe County, NC Register's Office; then from said established BEGINNING point and moving along the former municipal boundary line of Biltmore Forest and the City of Asheville, the following two calls: North 37 degrees 31 minutes 0 seconds West 777.23 feet to an existing concrete marker (City Limit Marker) described in Deed recorded in Deed Book 1642, at Page 252 and also being the terminus of the 16th call of Deed Book 79, at Page 1, both of the Buncombe County, NC Register's Office; and North 5 degrees 0 minutes 48 seconds East 208.16 feet to an iron pipe set; thence along the new municipal line between the Town of Biltmore Forest and the City of Asheville, the following ten calls: South 31 degrees 15 minutes 56 seconds East 253.98 feet to an iron pipe set; South 86 degrees 17 minutes 19 seconds East 238.87 feet to a point; South 3 degrees 42 minutes 41 seconds West 205.98 feet to a point; South 17 degrees 9 minutes 14 seconds East 84.38 feet to a point; South 36 degrees

34 minutes 52 seconds East 37.12 feet to a point; South 37 degrees 32 minutes 25 seconds East 136.55 feet to a point; South 15 degrees 11 minutes 6 seconds East 34.36 feet to a point; South 18 degrees 10 minutes 16 seconds East 44.02 feet to a point; South 23 degrees 57 minutes 48 seconds East 97.46 feet to a point; and South 31 degrees 26 minutes 2 seconds East 2.10 feet to a point; thence South 89 degrees 17 minutes 6 seconds West 95.34 feet to the point of BEGINNING, containing 3.1201 acres, more or less, and being a consolidated description of Tract D and Tract E as shown on a survey by John B. Young, R.L.S., entitled "Property Exchange Map for the Town of Biltmore Forest and the City of Asheville", dated March 4, 1997, and designated as Job File Number 90086-D-591, reference to said survey being made in aid of description.

Section 5. Section 4 of this act shall have no effect upon the validity of any liens of the City of Asheville for ad valorem taxes which have attached prior to the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still in the corporate limits of the City of Asheville.

Section 6. The Town of Biltmore Forest shall initiate proceedings within 60 days from the effective date of this act to zone the tract described in Section 4 of this act to an appropriate classification within the Town of Biltmore Forest's zoning ordinance.

Section 7. If any provision of this act or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 655

CHAPTER 251

AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWN OF MADISON.

The General Assembly of North Carolina enacts:

Section 1. Effective as of midnight June 30, 1997, the noncontiguous area described herein which lies within the extraterritorial jurisdiction of the Town of Madison and is delineated on the Official Zoning Map of the Town of Madison is annexed to the Town of Madison:

BEGINNING AT A POINT being the intersection of the centerlines of State Highway 704 and Grogan Lake Road (SR 1178), thence east southeast approximately 1540 feet along the centerline of State Highway 704 to a point being the intersection of the centerline of State Highway 704 and Island Drive (SR 1169), thence south approximately 2420 feet to a point on the centerline of Island Drive parallel to the northernmost point of parcel 7916.16-74-6129, thence west southwest approximately 1910 feet along the

northern boundary of said parcel to a point being the northwest boundary corner of said parcel, thence north approximately 1020 feet along the eastern and southeastern property boundaries of parcels 7906-65-3798 and 7906-76-7040, thence east approximately 565 feet to a point in the centerline of Grogan Lake Road (SR 1178), thence north approximately 320 feet to a point on the centerline of Grogan Lake Road (SR 1178) parallel to the southwest property boundary corner of parcel 7906-86-2975, thence east approximately 212 feet to a point being the southeast property corner of said parcel, thence north approximately 546 feet along the eastern property boundary lines of parcels 7906-86-2975, 7906-87-2073 and 7918-84-2298 to a point being the northeast property boundary corner of parcel 7918-84-2298, thence west approximately 215 feet along the northern boundary of said parcel to the centerline of Grogan Lake Road (SR 1178), thence north approximately 200 feet along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the southwest property boundary corner of parcel 7906.08-87-3727, thence east approximately 215 feet along the southern boundary of said parcel to a point being the southeast property boundary corner of said parcel, thence north approximately 400 feet along the eastern boundaries of parcels 7906.08-87-3727 and 7906.08-87-3937 to a point being the northeast property boundary corner of parcel 7906-87-3937, thence west approximately 215 feet to a point in the centerline of Grogan Lake Road (SR 1178) parallel to the northwest property boundary corner of said parcel, thence north approximately 476 feet along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the southwest boundary corner of parcel 7915.05-28-3666, thence east approximately 211 feet to a point being the southeast boundary corner of said parcel, thence north approximately 221 feet to a point being the northeast boundary corner of said parcel, thence west approximately 208 feet to the centerline of Grogan Lake Road (SR 1178) to a point parallel to the northwest boundary corner of said parcel, thence north approximately 534 feet along the centerline of Grogan Lake Road (SR 1178) to the BEGINNING.

Section 2. G.S. 160A-58.1(b)(2) does not apply to the area set out in Section 1 of this act.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 695

CHAPTER 252

AN ACT TO ANNEX A DESCRIBED AREA TO THE TOWN OF ABERDEEN.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Aberdeen are extended to include the following described area:

Area 1

Lying and being in Sandhills Township, Moore County, North Carolina, on the east side of, and adjoining, Glasgow Street, on the north and south side of, and adjoining, Harris Street, and on the southwest side of, and adjoining, the southwest line of the Aberdeen Town limits, and being more particularly described as follows:

BEGINNING at the point where the present southwest line of the Aberdeen Town limits intersects the eastern R/W of Glasgow Street, and runs thence as said southwest Town limit line about S 61° 57' E about 670 feet to the point where the said Town limit line intersects the south line of that tract shown on tax map 95, Block 3, parcel 1, Sandhills Township, County of Moore tax department; thence as said south line about S 88° 55' W about 75.5 feet to a point, the southwest corner of said parcel 1; thence as the south line of parcel 2 about S 79° 20' W about 195.1 feet to the southwest corner of parcel 2; thence as the south lines of parcels 3, 3A, 4, 5, 5A, and 6 about N 58° 25' W about 32.6 feet to a point; thence about S 18° 34' W about 29.8 feet to a point; thence about N 74° 12' W about 323.7 feet to a point in the eastern R/W of Glasgow Street; thence as said eastern R/W of Glasgow Street about N 01° 23' E about 149.5 feet to a point in said R/W; thence continuing as said R/W about N 09° 45' E about 127.8 feet to the BEGINNING point, containing 2.4 acres more or less. Description based on a compilation of computer GIS information, tax maps, and other information supplied by the County of Moore, and not from actual field survey. This description is subject to an actual field survey for clarification of metes and bounds calls on all new town limit lines.

Area 2

Lying and being in Sandhills Township, Moore County, North Carolina, on the southeast side of, and adjoining, the southeast line of the Aberdeen Town limits, and on the southwest side of, and adjoining, the southwest line of the Aberdeen Town limits, and being more particularly described as follows:

BEGINNING at a point where the present southwest town limit line intersects the east R/W of Debnan Street, and runs thence as said southwest town limit line about S 61° 57' E about 334.2 feet to the most southern corner of the present town limits; thence as the southeast town limit line about N 30° 02' E about 567 feet to a point where said town limit line intersects the east R/W of Keyser Street; thence running as said east R/W of Keyser Street about S 27° 13' E about 205.9 feet to a point in said R/W where the most western corner of that tract shown as parcel 6, block 4, tax map 95, is located; thence running with the north lines of parcel 6, the north lines of parcel 9, and the northwest, northeast, and southeast lines of parcel 1B about S 89° 10' E about 44.5 feet; about N 02° 49' W about 175.3 feet; about N 88° 23' E about 157.8 feet; about S 05° 45' E about 181.9 feet; about N 66° 52' E about 254.6 feet; about S 24° 24' E about 135.6 feet; about N 66° 29' E about 197.1 feet; about S 27° 35' E about 65.6 feet; and about S 66° 21' W about 199.8 feet to a point at the most

southern corner of parcel 1B in the east R/W of Cox Street; thence as said east R/W about S 24° 50' E about 174.7 feet to a point in said R/W, the northeast corner of parcel 16, block 4, tax map 95; thence as the north line of parcel 16 and east lines of parcels 16, 20, 24, 25, and 26, about N 64° 16' E about 265.6 feet; thence about S 24° 15' E about 524.3 feet to a point in the north line of parcel 32; thence as said north line about N 61° 54' E about 69.1 feet to the most northern corner of parcel 32; thence as the east line of said parcel 32 about S 46° 30' E about 221.6 feet to the most eastern corner of parcel 32; thence as the northwest lines of parcels 42, 43, and 44 about N 60° 58' E about 189.7 feet to the northeast corner of parcel 44, said point also being the southeast corner of Farm Plot B as shown on a plat of Brooklyn Heights recorded in Map Book 3 page 36; thence as the west line of Farm Plot C and Farm Plot F and the east lines of parcels 44, 46, 58, 59(Farm Plot E), about S 29° 04' E about 860 feet crossing Blyther Street to the point where its south R/W intersects with the west R/W of PeeDee Road; thence as the west R/W of PeeDee Road about S 18° 50' W about 1198 feet to the intersection of the west R/W of PeeDee Road with the north R/W of Bethea Street; thence as said north R/W of Bethea Street about N 77° 35' W about 578.6 feet crossing Blue's Bridge Road to a point in the west R/W of Blue's Bridge Road; thence as the west R/W of Blues Bridge Road about N 13° 20' W about 516.5 feet to a point in said R/W where the south R/W of Vista Drive intersects; thence as the south R/W of Vista Drive about S 73° 07' W about 163.4 feet to a point in said R/W; thence continuing as said R/W about S 67° 47' W about 136.3 feet to a point in said R/W; thence continuing as said R/W about S 62° 48' W about 104 feet to a point in said R/W; thence continuing as said R/W about S 58° 12' W about 144.7 feet to a point in said R/W where the west R/W of Rush Drive intersects; thence as the west R/W of Rush Drive about N 31° 11' W about 402.4 feet to the south R/W of Meredith Street; thence as the south R/W of Meredith Street about S 60° 03' W about 71 feet to a point at the west end of Meredith Street; thence crossing Meredith Street and running to, and crossing, Long Street about N 29° 06' W about 227.9 feet to a point in the north R/W of Long Street; thence as said north R/W of Long Street about S 59° 21' W about 261 feet to the end of Long Street where it intersects with the northeast boundary of parcel 9, of block 4, tax map 94; thence as said northeast line of parcel 9 about N 29° 09' W about 466.4 feet to, and crossing, the southwest extension of South Aberdeen Street (see plat book 2 pg 5) now Benjamin Street; thence running as the north R/W of Benjamin Street or South Aberdeen St. (as shown on plat bk 2 pg 5) about S 60° 02' W about 121 feet to a point where said north R/W intersects the east R/W of Debnan Street; thence as the east R/W of Debnan Street about N 01° 07' W about 1233 feet to the BEGINNING point, containing about 94.8 acres more or less. Description based on a compilation of computer GIS information, tax maps, recorded maps, and other information supplied by the County of Moore, and not from actual field survey. This description is subject to an actual field survey for clarification of metes and bounds calls on all new town limit lines.

Section 2. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 753

CHAPTER 253

AN ACT TO MOVE A PARCEL OF PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF ABERDEEN AND TO THE TOWN OF SOUTHERN PINES, AND TO ANNEX A PARCEL OF PROPERTY TO THE TOWN OF ABERDEEN.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the Town of Aberdeen and is added to the corporate limits of the Town of Southern Pines:

MARTIN PROPERTY

BEING a portion of Lot 49, Whitehouse Heights being further described as follows:

BEGINNING at an existing iron pin, the corner of Lots 49 and 50 of Whitehouse Heights as shown in a map recorded in Map Book 2, Page 16, Moore County Register of Deeds and proceeding thence N 89 degs 25 mins 00 secs East 554.49 feet to a point in the right-of-way of Murray Hill Avenue, thence S 00 degs 35 mins 00 secs East 15 feet to a point, said point being the corner of a 5.00 acre parcel conveyed to Greybriar Retirement Center, Inc., as recorded in Plat Cabinet 4, Slide 344, Moore County Register of Deeds; and proceeding along the Greybriar line S 00 degs 35 mins 00 secs 488.23 feet to a point; thence N 89 degs 25 mins 00 secs East 445.97 feet to a point in the line of Yadkin Park, Section 4, as shown in Plat Cabinet 3, Slide 146; and thence along the Yadkin Park line S 00 degs 33 mins 13 secs East 1,900.51 feet to a concrete monument in the line of the sanitary sewer line in the easement to Carolina Power and Light; and proceeding thence 89 degs 23 mins 35 secs West 999.00 feet to an existing iron pin, the southern corner in common of Lots 49 and 50 of Whitehouse Heights; and proceeding thence along the common line of Lots 49 and 50 N 00 degs 35 mins 31 secs West 2,389.17 feet to the point of beginning; and consisting of 49.84 acres.

EXCEPTING however, from the 49.84 acres, that parcel of property described of the cul-de-sac of Commerce Avenue which is a portion of Yadkin Park and is shown on the replat of Lots 52 and 53, Section 4, a revision of Commerce Avenue recorded in the Moore County Register of Deeds in Plat Cabinet 5, Slide 806.

Section 2. Section 1 of this act shall have no effect upon the validity of any liens of the Town of Aberdeen for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Aberdeen.

Section 3. The corporate limits of the Town of Aberdeen are extended to include the following described property:

WAL-MART PROPERTY

A certain parcel of land in Sandhills Township, Moore County, North Carolina, fronting on the west line of Turner Street and fronting on the south line of Commerce Avenue in the Yadkin Park Development, described as follows:

Beginning at an iron stake about 50 yards south of Commerce Avenue, in the west line of Turner Street, said iron stake being the east common corner of lots 27 and 29 as shown on a plat entitled "Yadkin Park, Section One", recorded in Plat Cabinet 2 at slide 239 in the Moore County Registry, said beginning corner further located as being S 02° 54' 40" E 1539.24 feet from N.C.G.S. Monument "Simpson" (Moore County); running thence from the beginning, as the line of Turner Street, S 20° 16' 59" E 110.00 feet to an iron stake, the east corner of lots 26 and 27; thence leaving the street as the common line of lots 26 and 27 S 69° 43' 00" W 200.00 feet to the west common corner of lots 26 and 27 in the line of lot no. 21; thence as a common line of lots 26 and 21, S 20° 17' 00" E. 25.00 feet to the southeast corner of lot no. 21; thence as the south line of lot no. 21, N 84° 01' 21" W 216.47 feet to the southwest corner of lot no. 21 in the southeast line of W.E. Byrd Street, also a corner of the town of Aberdeen corporate limits; thence as the lines of the Aberdeen corporate limits, the following calls, S 29° 44' 33" W 285.02 feet to a corner; thence N 60° 14' 38" W 60.03 feet to a corner; thence N 60° 16' 26" W 169.97 feet to a corner; thence N 85° 59' 38" W. 289.27 feet to a corner; thence N 00° 32' 13" W 126.74 feet to a corner in the Aberdeen Corporate limit line; thence leaving the Aberdeen corporate limit line, N 69° 42' 16" E 596.83 feet to a corner at the intersection of the south line of Commerce Avenue with the east line of W.E. Byrd Street; thence as the east line of W.E. Byrd Street, S 20° 18' 59" E 150.00 feet to an iron stake; thence N 69° 43' 14" E 399.88 feet to the beginning, containing 4.81 acres, more or less.

Section 4. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 789

CHAPTER 254

AN ACT TO REVISE THE BOUNDARIES OF THE TOWN OF OAKBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 51 of the Private Laws of 1915, as amended by Chapter 18 of the Private Laws of 1929 and Chapter 254 of the 1993 Session Laws, reads as rewritten:

"Sec. 2. The corporate limits of the town are as follows:
BEGINNING AT A POINT in the centerline of NC 742 marked by a railroad spike in the present south corporate limits of the Town of Oakboro; thence, easterly 1113 feet across NC 742 and along the south property line of Parcels 6510 and 2637 (Map 6503) to the southeast corner of Parcel 2637, 1204 feet, to a corner with Parcel 2036 (Map 6503.02); thence,

northeasterly 310 feet along the property line to the most easterly corner of Parcel 2036; thence, northwesterly, 2580 feet along the northeast property line of Parcel 2036 to a corner with Parcel 3130 (Map 6503.02); thence, northeasterly 380 feet along the property line of Parcel 3130 and continuing in the same line across the Norfolk and Southern Railway and NC 138 to a point in the north right-of-way line of NC 138.

Thence, southeasterly, 600 feet, along the north right-of-way line of NC 138 to the southeastern corner of Parcel 8456 (Map 6503); thence, northerly, 600 feet to the northeastern corner of Parcel 8456; thence, westerly 450 feet, to a corner with Lot 3 of the Whitley Estate (within Parcel 7947, Map 6503); thence, northerly, 660 feet along the east lot line of Lot 3 and across Alonzo Road (SR 1974) to the north right-of-way line of Alonzo Road; thence, southwesterly, 700 feet, along the north right-of-way of Alonzo Road to a corner with Lot 4, Whitley Estate (within Parcel 3643, Map 6503); thence, northerly, 1000 feet, to the northwest corner of Lot 4; thence, westerly along the north lot line of Lot 5, Whitley Estate, and across St. Martin Road (First Street), 450 feet, to a point in the north right-of-way of St. Martin Road at the most southerly corner of Parcel 5215 (Map 6504.04); thence, northeasterly 930 feet along St. Martin Road to the eastern corner of Parcel 0817 (Map 6504.04); thence, northwesterly 770 feet along the eastern property lines of Parcels 0817, 8990, 5994, and the west property line of Parcel 8633 (Map 6504.04) to the southwest corner of Parcel 8633; thence northerly 1195 feet along the west property line of Parcel 8633 to the easternmost corner of Parcel 9086 (Map 6504.04); thence, 880 feet along the eastern property line of Parcels 9086, 7379, 7761, and 7867 (Map 6504.04) to northeastern corner of Parcel 7867; thence, westerly 370 feet to the west right-of-way of East Eighth Street (SR 1976); thence, southwesterly 3020 feet along East Eighth Street to the easternmost corner of Parcel 9226 (Map 6504.03); thence, northwesterly, 400 feet, along the property line of Parcel 5054 (Map 6504.03) to a corner with a new Parcel F09-4-3H (Map 6504.03); thence, meandering northeasterly and northwesterly, 300 feet, along the property line of Parcel F09-4-3H to a point in the south right-of-way line of E. Tenth Street; thence, northeasterly, 1530 feet, along the south right-of-way of E. Tenth Street to intersection with the southernmost corner of Parcel 993 (Map 6504); thence northwesterly along the East Tenth Street right-of-way line, 1020 feet, to the most easterly corner of Parcel 0520 (Map 6504.03); thence, meandering northwesterly, 1335 feet, along the northern property lines of Parcels 0520 and 7624 (Map 6504.03), across Pecan Drive, and along the north property lines of Parcels 4752 and 1797 (Map 6504.03) to the most northerly corner of Parcel 1797; thence, southwesterly, 1570 feet, along the southeast property lines of Parcels 9161 and 0356 (Map 6504) to the most southerly corner of Parcel 0356; thence, northwesterly 1035 feet along the southwest property lines of Parcels 0356, 5588, and 7871 (Map 6504) to a corner of Parcel 7871 which is also the most northerly corner of Parcel 3450 (Map 6504); thence, northerly 150 feet to the most easterly corner of Parcel 1795 (Map 6504); thence, meandering northerly 545 feet along the eastern property lines of Parcels 1795, 1858, and 1949 (Map

6504) to the most northerly corner of Parcel 1949; thence, northwesterly 1471 feet along the northeast property lines of Parcels 0382 and 9496 (Map 6504) and Parcels 9079, 9223, 8371, 6472, 6594, and 5676 (Map 5594) to the most northerly corner of Parcel 5676; thence, northeasterly 210 feet to a point in the southeastern property line of Parcel 7254 (Map 5594); thence, northwesterly 990 feet along the southwestern property line of Parcel 7254, across Parcel 2486 (Map 5594) to a point in the southeast right-of-way line of Big Lick Road (SR 1115).

Thence southwesterly 1450 feet along Big Lick Road to the northernmost corner of Parcel 0001 (Map 594); thence, southeasterly 970 feet along the east and north property lines of Parcels 0001 and 7264 (Map 5594) to the west right-of-way of Swift Road (SR 1110); thence, southerly 2400 feet along Swift Road to a point across from Lynn Road; thence northwesterly 395 feet to a point; thence, northerly 330 feet to a point; thence, westerly 1586 feet to the westernmost corner of Parcel 5660 (Map 5594); thence southerly and westerly 1453 feet along the west property lines of Parcels 4776 and 0340 (Map 5594) to the southwest corner of Parcel 0340; thence, southeasterly 1778 feet to the southeastern corner of Parcel 0340; thence, northerly 1418 feet along the east property lines of Parcels 0340 and 4776 to a point; thence, northeasterly 774 feet to a point; thence, 920 feet easterly and along the north property line of Parcel 1959 (Map 5594) to the northeast corner of Parcel 1959 in the west right-of-way of Swift Road; thence southerly 200 feet along Swift Road to a point; thence, easterly 2270 feet across Swift Road and along the north property lines of Parcels 8542, 3462, 5359, and 2415 (Map 5594) to the northeast corner of Parcel 2415; thence, meandering 1955 feet along the southwestern property lines of Parcel 8907 (Map 5594) and Parcels 3743, 9938 and 3774 (Map 6504) to the southernmost corner of Parcel 3774; thence, 500 feet, southeasterly along the eastern property lines of Parcels 3640, 4229, and 4177 (Map 6504) to the intersection of W. Eleventh Street and Hurley Road (SR 1112); thence, 760 feet, continuing diagonally across the intersection of W. Eleventh and Hurley Road and along the eastern property lines of Parcel 5749 (Map 6503.01) and Parcel 3808 (Map 5593) to the centerline of the Norfolk & Southern Railroad; thence, 1600 feet, southeasterly, along the Railroad to a point; thence, 1470 feet, southwesterly along the northwestern property line of Parcel 7249 (Map 6503.01) to the most westerly corner of Parcel 7249; thence, easterly, 550 feet, to a point at the northwest corner of Parcel 3991 (Map 6503.01); thence, southerly, 190 feet, to the southwest corner of Parcel 3991 in the north right-of-way of Hamilton Road; thence, easterly, 40 feet, along the north right-of-way of Hamilton Road to a point.

Thence, southerly, 830 feet, across Hamilton Road and along the western property lines of Parcels 4475 and 4965 (Map 6503) to the westernmost corner of Parcel 4965; thence, southeastern, 920 feet, along the southwest property line of Parcel 4965, the northeast property line of Parcel 5584 (Map 6503.01), across NC 205, and along the northeast property line of Parcel 7324 (Map 6503.01) to the easternmost corner of Parcel 7324; thence, northeasterly, 1940 feet, along the southeastern and eastern property

lines of Parcels 8456, 9597, 1789, and 3057 (Map 6503.01) and the east right-of-way of NC 205 to the south right-of-way of Coble Mill Road (SR 1152); thence, easterly, 1965 feet, along the Coble Mill Road south right-of-way to intersection with the west right-of-way line of Rocky River Road; thence, southerly 2620 feet, along the west right-of-way of Rocky River Road to a point approximately 250 feet south of James Road; thence, easterly 1975 feet, across Rocky River Road in a line with and following the southern property lines of Parcels 5656, 0712, 4832, 6877, 8961, 9953, 0914, and 1080 (Map 6503), to the west right-of-way line of NC 742; thence, southeasterly 75 feet to the POINT OF BEGINNING."

Section 2. This act becomes effective June 30, 1997.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

H.B. 810

CHAPTER 255

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Nash County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(b) Collection. ~~Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax,~~

~~collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

~~(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy tax taxes to the Nash Tourism Development Authority. Authority, itemized by tax. The Of the net proceeds of the tax levied under subsection (a) of this section, the Authority shall spend at least two-thirds of the funds remitted to it under this subsection only to promote travel and tourism in Nash County, and shall spend the remainder on tourism-related expenditures. The Authority shall spend the net proceeds of the tax levied under subsection (a1) of this section only to construct, maintain, operate, or market a convention center. The following definitions apply in this subsection:~~

- ~~(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.~~
- ~~(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.~~

- (3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 2. County administrative provisions. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to Madison County, Madison and Nash Counties."

Section 3. Gold Rock Annexation. (a) The corporate limits of the City of Rocky Mount are extended to include the Gold Rock I-95 interchange area as described below:

Beginning at N.C.G.S. Monument "AVENT" having coordinates N=842,408.476 feet and E=2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County ABC Board, THE POINT OF BEGINNING; thence along the property of Nash County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property line of McLane Company, Inc.; thence along said property line the following six courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; thence N 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point; thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the eastern right-of-way of Interstate 95 the following four courses and distances: N 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve

concave to the right having a radius of 876.93 feet and a chord bearing and distance of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right having a radius of 638.20 feet and a chord bearing and distance of N 14°20'06"W 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the southwestern corner of the property now or formerly owned by Harry A. Whitaker, Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31 feet to a point on the eastern right-of-way of Goldrock Road; thence along the property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of Beginning containing 71.70 acres and being in South Whitakers Township, Nash County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

(b) The corporate limits of the area annexed by subsection (a) of this section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area annexed by subsection (a) of this section are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the municipality.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

(d) This section becomes effective only if the City Council of the City of Rocky Mount adopts an ordinance including the area described in subsection (a) of this section in the corporate limits of the City of Rocky Mount. The ordinance is effective at the date specified therein, but not later than July 1, 1998.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law on the date it was ratified.

S.B. 473

CHAPTER 256

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

BUDGET CONTINUATION

Section 1. The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions, and agencies at a level not to exceed the level at which those operations were authorized by the General Assembly as of June 30, 1997. The Director of the Budget shall not allocate funds for any of the purposes set out in the base budget reductions contained in Senate Bill 352, 3rd edition, and Senate Bill 352, 5th edition, that are not in controversy.

To the extent necessary to implement this authorization, there is appropriated from the appropriate State funds and cash balances, federal receipts, and departmental receipts for the 1997-98 fiscal year, funds necessary to carry out this section.

This appropriation and this authorization to allocate and spend funds shall remain in effect until ratification of the Current Operations and Capital Improvements Appropriations Act of 1997, at which time that act shall become effective and shall govern appropriations and expenditures. Upon ratification of the Current Operations and Capital Improvements Appropriations Act of 1997, the Director of the Budget shall adjust allocations to give effect to that act from July 1, 1997.

Except as otherwise provided by this act, the limitations and directions for the 1996-97 fiscal year in Chapters 324 and 507 of the 1995 Session Laws and Chapter 18 of the Session Laws of the 1996 Second Extra Session remain in effect. Session laws that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

EMPLOYEE SALARIES

Section 2. The salary schedules and specific salaries established for fiscal year 1996-97 by or under Chapters 324 and 507 of the 1995 Session Laws and Chapter 18 of the Session Laws of the 1996 Second Extra Session for offices and positions shall remain in effect until the effective date of the Current Operations and Capital Improvements Appropriations Act of 1997.

Teachers and other employees shall not move up on these salary schedules or receive automatic, annual, performance, merit, or other increments until authorized by the General Assembly.

SALARY-RELATED CONTRIBUTIONS/EMPLOYERS

Section 3. The State's employer contribution rates budgeted for retirement and related benefits for the 1997-98 fiscal year shall remain the same as they are on June 30, 1997.

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

Section 4. The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

FY 1999-2000	\$1,182.2 million
FY 2000-2001	\$1,211.2 million
FY 2001-2002	\$1,241.2 million
FY 2002-2003	\$1,271.9 million.

The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

FY 1999-2000	\$861.7 million
FY 2000-2001	\$891.0 million
FY 2001-2002	\$921.6 million
FY 2002-2003	\$953.3 million.

FUNDS SHALL NOT REVERT

Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 1, 1997, these funds shall revert to the appropriate fund on that date.

EXTEND SENTENCING COMMISSION

Section 6. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, and Chapter 236 of the 1995 Session Laws, reads as rewritten:

"Sec. 8. This act is effective upon ratification, and shall expire July 1, 1997, July 31, 1997."

EXTEND MORATORIUM ON FISHING LICENSES

Section 7. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning July 1, 1994, and ending June 30, 1997, July 31, 1997, under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-153.1. Crab license.
- (3) G.S. 113-154. Shellfish license
- (4) G.S. 113-154.1. Nonvessel endorsements to sell fish."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 8. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"(c) Subsection (a) of this section expires June 30, 1997, July 31, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 9. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars

(\$2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by June 30, 1997, July 31, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 10. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, and Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"(h) Subsections (a) through (d) of this section expire June 30, 1997, July 31, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective August 1, 1997.

CORE SOUND/DESCRIPTION OF AREA A FOR SHELLFISH LEASE MORATORIUM

Section 12. Section 3 of Chapter 547 of the 1995 Session Laws (1996 Regular Session) as amended by Section 1 of Chapter 633 of the 1995 Session Laws (1996 Regular Session) and as rewritten by Section 27.33 of Chapter 18 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire July 1, 1997, August 1, 1997."

EFFECTIVE DATE

Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires August 1, 1997.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law upon approval of the Governor at 8:15 p.m. on the 30th day of June, 1997.

S.B. 500

CHAPTER 257**AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE COMMISSION AND TO MODIFY THE PROVISIONS FOR NO-WAKE ZONES ON LAKE NORMAN.**

The General Assembly of North Carolina enacts:

Section 1. For purposes of this act:

- (1) "Board" means the board of commissioners of one of the three counties.
- (2) "Commission" means the Mountain Island Lake Marine Commission or its governing board, as the case may be.
- (3) "Commissioner" means a member of the governing board of the Mountain Island Lake Marine Commission.
- (4) "Three counties" means Gaston, Lincoln, and Mecklenburg Counties.
- (5) "Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.
- (6) "Mountain Island Lake" means the impounded body of water along the Catawba River in the three counties extending from the Cowans Ford Dam downstream to the Mountain Island Dam.
- (7) "Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1,000 feet of the full pond elevation contour on Mountain Island Lake. In addition, the shoreline area includes all islands within Mountain Island Lake and all peninsulas extending into the waters of Mountain Island Lake.
- (8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission.

Section 2. The three counties may by joint resolution create the Mountain Island Lake Marine Commission. Upon its creation the Commission has the powers, duties, and responsibilities conferred upon it by joint resolution, subject to the provisions of this act. The provisions of any joint resolution may be modified, amended, or rescinded by a subsequent joint resolution. A county may unilaterally withdraw from participation as provided by any joint resolution or the provisions of this act, once the Commission has been created, and any county may unilaterally withdraw from the Commission at the end of any budget period upon 90 days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be

distributed to or divided among the three counties and any other public agency or agencies serving the Mountain Island Lake area in a manner considered equitable by the Commission by resolution adopted by it prior to dissolution.

Section 3. Upon its creation, the Commission shall have a governing board of seven. Except as otherwise provided for the initial appointees, each commissioner shall serve a three-year term. Upon creation of the Commission, the Boards of Commissioners of Gaston County and Mecklenburg County shall appoint three commissioners each, and the Board of Commissioners of Lincoln County shall appoint one commissioner. Of the initial appointees:

- (1) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve one-year terms;
- (2) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve two-year terms; and
- (3) One member appointed by Gaston County, one member appointed by Mecklenburg County, and the member appointed by Lincoln County shall serve three-year terms.

Any commissioner who has served two consecutive terms, including any initial term of less than three years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term.

Section 4. The joint resolution of the three counties shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by those budgetary and accounting procedures specified by joint resolution.

Section 5. Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and officers as they choose. All officers shall serve one-year terms. The governing board shall adopt rules and regulations as it deems necessary, not inconsistent with the provisions of this act or of any joint resolution, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as authorized by those rules and regulations. The Commission shall meet regularly at times and places as specified in its rules and regulations or in any joint resolution. However, meetings of the Commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

Section 6. (a) Within the limits of funds available to it and subject to the provisions of this act and of any joint resolution, the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may deem necessary in carrying out its duties;
- (2) Contract with consultants for services it requires;
- (3) Contract with the State of North Carolina or the federal government, or any agency or department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this act; and
- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Mountain Island Lake and its shoreline area, or protection of property in the shoreline area subject however to Chapter 113 of the General Statutes and rules promulgated under that Chapter.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the State of North Carolina or its agencies or subdivisions, or by private and civic sources.

(c) The governing boards of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually property taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution, or as provided by G.S. 153A-149.

(d) The Commission shall be subject to those audit requirements as may be specified in any joint resolution.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be deemed to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

(f) Unless otherwise specified by joint resolution, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties.

Section 7. (a) A copy of the joint resolution creating the Commission and of any joint resolution amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the Wildlife Commission. When the Executive Director receives resolutions that are in substance identical from all three counties concerned, the Executive Director shall within 10 days so certify and distribute a certified single resolution text to the following:

- (1) The Secretary of State;
- (2) The clerk to the governing board of each of the three counties;
- (3) The clerks of Superior Court of Lincoln, Mecklenburg, and Gaston Counties. Upon request, the Executive Director also shall send a certified single copy of any and all applicable joint resolutions to the chairman of the Commission; and
- (4) A newspaper of general circulation in the three counties.

(b) Unless a joint resolution specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretary of State for filing. Certifications of the Executive Director under the seal of the Commission as to the text or amended text of any joint resolution and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by any clerk of superior court of the text of any certified resolution filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that that resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any resolution by the Executive Director to any person other than the Secretary of State.

Section 8. (a) Except as limited in subsection (b) of this section, by restrictions in any joint resolution, and by other supervening provisions of law, the Commission may make regulations applicable to Mountain Island Lake and its shoreline area concerning all matters relating to or affecting the use of Mountain Island Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing being given in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Mountain Island Lake, the Commission may, after public notice, request that the Wildlife Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon dates as stipulated in the regulations, except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Mountain Island Lake or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Mountain Island Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretary of State;
- (2) The clerks of Superior Court of Gaston, Lincoln, and Mecklenburg Counties; and
- (3) The Executive Director of the Wildlife Commission.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. Those certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and shall not be a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this act relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it shall be presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

Section 9. (a) Where a joint resolution so provides, all law enforcement officers, or those officers as may be designated in the joint resolution, with territorial jurisdiction as to any part of Mountain Island Lake or its shoreline area shall, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Mountain Island Lake and its shoreline area.

(b) Where a joint resolution provides it, the Commission may hire special officers to patrol and enforce the laws on Mountain Island Lake and its shoreline area. These special officers have and exercise all the powers of peace officers generally within the area in question and shall take the oaths and be subject to all provisions of law relating to law enforcement officers.

(c) Unless a joint resolution provides otherwise, all courts in the three counties within the limits of their subject matter jurisdiction shall have

concurrent jurisdiction as to all criminal offenses arising within the boundaries of Mountain Island Lake and its shoreline area.

(d) Where a law enforcement officer with jurisdiction over any part of Mountain Island Lake or its shoreline area is performing duties relating to the enforcement of the laws on Mountain Island Lake or in its shoreline area, the officer has the extraterritorial jurisdiction necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of that area to another although across territory not within the boundaries of Mountain Island Lake and its shoreline area; conducting prisoners in custody to court or detention facilities as authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that such process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be deemed an extension of the duties of the office held, and no officer shall take any additional oath or title of office.

Section 10. (a) Section 4 of S.L. 97-129 reads as rewritten:

"Section 4. It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a boat launching area, bridge, dock, pier, marina, boat storage structure, or boat service area on the waters of Lake Norman. No-wake speed is idle speed or slow speed creating no appreciable wake.

~~With regard to marking the no-wake speed zone established in this section, each of the boards of commissioners of Catawba, Iredell, Lincoln, and Mecklenburg Counties may place and maintain navigational aids and regulatory markers of a general nature on the waters of Lake Norman within the boundaries of each respective county. Provided the counties exercise their supervisory responsibility, they may delegate the actual process of placement or maintenance of the markers to some other agency, corporation, group, or individual. With regard to marking the restricted zones, markers may be placed and maintained by the individuals using the protected areas and facilities in accordance with the Uniform Waterway Marking System and any supplementary standards for that system adopted by the Wildlife Resources Commission.~~

This section is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes."

(b) Section 5 of S.L. 97-129 reads as rewritten:

~~"Section 5. Section 4 of this act is effective when it becomes law and is enforceable after markers complying with Section 7 are placed in the water. The remainder of this act is effective when it becomes law. This act is effective when it becomes law."~~

Section 11. Sections 1 through 9 of this act apply only to Gaston, Lincoln, and Mecklenburg Counties.

Section 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law on the date it was ratified.

H.B. 430

CHAPTER 258

AN ACT TO EXEMPT THE NORTH CAROLINA ZOOLOGICAL PARK FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE, AND TO PROVIDE FOR THE ADOPTION OF RULES AUTHORIZING SPECIAL-USE PERMITS FOR THE USE OF PYROTECHNICS IN STATE PARKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(18) The leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment, Health, and Natural Resources to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurants and lodging facilities."

Section 2. G.S. 113-35 is amended by adding a new subsection to read:

"(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions include, but are not limited to, a requirement that the permittee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits as determined by the Secretary."

Section 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Department of Environment, Health, and Natural Resources may adopt temporary rules to implement the provisions of G.S. 113-35(a1), as enacted by Section 2 of this act.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law upon approval of the Governor at 12:00 p.m. on the 1st day of July, 1997.

AN ACT TO CONFORM NORTH CAROLINA HEALTH INSURANCE LAWS TO RECENTLY ENACTED FEDERAL LAWS CONCERNING HEALTH INSURANCE UNDERWRITING AND PORTABILITY, MATERNITY COVERAGE, AND COVERAGE FOR MENTAL ILLNESS.

The General Assembly of North Carolina enacts:

Section 1. Article 68 of Chapter 58 of the General Statutes is amended as follows:

(a) By repealing G.S. 58-68-1, 58-68-5, 58-68-10, 58-68-15, and 58-68-20.

(b) By rewriting the Article heading to read:

~~"North Carolina Health Insurance Trust Commission.~~
Health Insurance Portability and Accountability."

(c) By adding the following Part A and Part B:

"Part A. Group Market Reforms.

"Subpart 1. Portability, Access, and Renewability Requirements.

"§ 58-68-25. Definitions; excepted benefits; employer size rule.

(a) Definitions. -- In addition to other definitions throughout this Article, the following definitions and their cognates apply in this Article:

(1) 'Bona fide association'. -- With respect to health insurance coverage offered in this State, an association that:

- a. Has been actively in existence for at least five years.
- b. Has been formed and maintained in good faith for purposes other than obtaining insurance.
- c. Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee).
- d. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members (or individuals eligible for coverage through a member).
- e. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.
- f. Meets the additional requirements as may be imposed under State law.

(2) 'COBRA continuation provision'. -- Any of the following:

- a. Section 4980B of the Internal Revenue Code of 1986, other than subdivision (f)(1) of the section insofar as it relates to pediatric vaccines.
- b. Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, other than section 609 of the Act.
- c. Title XXII of the Public Health Service Act (42 U.S.C.S. § 300bb, et seq.) as requirements for certain group health plans for certain State and local employees.

- d. Article 53 of this Chapter or the health insurance continuation law of another state.
- (3) 'Employee'. -- The meaning given the term under section 3(6) of the Employee Retirement Income Security Act of 1974.
- (4) 'Employer'. -- The meaning given the term under section 3(5) of the Employee Retirement Income Security Act of 1974, except that the term shall include only employers of two or more employees.
- (5) 'Health insurance coverage' or 'coverage' or 'health insurance plan' or 'plan'. -- Benefits consisting of medical care, provided directly through insurance or otherwise and including items and services paid for as medical care, under any accident and health insurance policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, written by a health insurer.
- (6) 'Health insurer'. -- An insurance company subject to this Chapter, a hospital or medical service corporation subject to Article 65 of this Chapter, a health maintenance organization subject to Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter, that offers and issues health insurance coverage.
- (7) 'Health status-related factor'. -- Any of the factors described in G.S. 58-68-35(a)(1).
- (8) 'Individual health insurance coverage'. -- Health insurance coverage offered to individuals in the individual market, but not short-term limited duration insurance.
- (9) 'Individual market'. -- The market for health insurance coverage offered to individuals.
- (10) 'Large employer'. -- An employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the health insurance plan year.
- (11) 'Large group market'. -- The health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health insurance plan maintained by a large employer.
- (12) 'Medical care'. -- Amounts paid for:
- a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body.
 - b. Amounts paid for transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision.
 - c. Amounts paid for insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.
- (13) 'Network plan'. -- Health insurance coverage of a health insurer under which the financing and delivery of medical care (including items and services paid for as medical care) are

provided, in whole or in part, through a defined set of health care providers under contract with the health insurer.

(14) 'Participant'. -- The meaning given the term under section 3(7) of the Employee Retirement Income Security Act of 1974.

(15) 'Placed for adoption'. -- The assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of adoption of the child. The child's placement with the person terminates upon the termination of the legal obligation.

(16) 'Small employer'. -- The meaning given to the term in G.S. 58-50-110(22).

(17) 'Small group market'. -- The health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health insurance plan maintained by a small employer.

(b) Excepted Benefits. -- For the purposes of this Article, 'excepted benefits' means benefits under one or more or any combination of the following:

(1) Benefits not subject to requirements. --

a. Coverage only for accident or disability income insurance or any combination of these.

b. Coverage issued as a supplement to liability insurance.

c. Liability insurance, including general liability insurance and automobile liability insurance.

d. Workers' compensation or similar insurance.

e. Automobile medical payment insurance.

f. Credit-only insurance.

g. Coverage for on-site medical clinics.

h. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) Benefits not subject to requirements if offered separately. --

a. Limited scope dental or vision benefits.

b. Benefits for long-term care, nursing care, home health care, community-based care, or any combination of these.

c. The other similar, limited benefits as are specified in federal regulations.

(3) Benefits not subject to requirements if offered as independent, noncoordinated benefits. --

a. Coverage only for a specified disease or illness.

b. Hospital indemnity or other fixed indemnity insurance.

(4) Benefits not subject to requirements if offered as separate insurance policy. -- Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health insurance plan.

(c) Application of certain rules in determination of employer size. -- For the purposes of this Article:

- (1) Application of aggregation rule for employers. -- All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as one employer.
- (2) Employers not in existence in preceding year. -- In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.
- (3) Predecessors. -- Any reference in this subsection to an employer shall include a reference to any predecessor of the employer.

"§ 58-68-30. Increased portability through limitation on preexisting condition exclusions.

(a) Limitation on Preexisting Condition Exclusion Period; Crediting for Periods of Previous Coverage. -- Subject to subsection (d) of this section, a group health insurer may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if:

- (1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date.
- (2) The exclusion extends for a period of not more than 12 months, or 18 months in the case of a late enrollee, after the enrollment date.
- (3) The period of any preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage, if any, applicable to the participant or beneficiary as of the enrollment date.

(b) Definitions. -- For the purposes of this Part:

- (1) Preexisting condition exclusion. --

- a. In general. -- 'Preexisting condition exclusion' means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for the coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the date.
- b. Treatment of genetic information. -- Genetic information shall not be treated as a condition described in subdivision (a)(1) of this subsection in the absence of a diagnosis of the condition related to the information.

- (2) Enrollment date. -- With respect to an individual covered under a group health insurance plan, the date of enrollment of the individual in the coverage or, if earlier, the first day of the waiting period for the enrollment.

- (3) Late enrollee. -- With respect to coverage under a group health insurance plan, a participant or beneficiary who enrolls under the plan other than during:
- The first period in which the individual is eligible to enroll under the plan, or
 - A special enrollment period under subsection (f) of this section.
- (4) Waiting period. -- With respect to a group health insurance plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.
- (c) Rules Relating to Crediting Previous Coverage. --
- Creditable coverage defined. -- For the purposes of this Article, 'creditable coverage' means, with respect to an individual, coverage of the individual under any of the following:
 - A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
 - Group or individual health insurance coverage.
 - Part A or part B of title XVIII of the Social Security Act.
 - Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
 - Chapter 55 of title 10, United States Code.
 - A medical care program of the Indian Health Service or of a tribal organization.
 - A State health benefits risk pool.
 - A health plan offered under chapter 89 of title 5, United States Code.
 - A public health plan (as defined in federal regulations).
 - A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).'Creditable coverage' does not include coverage consisting solely of coverage of excepted benefits.
 - Not counting periods before significant breaks in coverage. --
 - In general. -- A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.
 - Waiting period not treated as a break in coverage. -- For the purposes of sub-subdivision a. of this subdivision and subdivision (d)(4) of this subsection, any period that an individual is in a waiting period for any coverage under a group health insurance plan or is in an affiliation period shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.
 - Time spent on short term limited duration health insurance not treated as a break in coverage. -- For the purposes of

sub-subdivision a. of this subdivision, any period that an individual is enrolled on a short term limited duration health insurance policy shall not be taken into account in determining the continuous period under sub-subdivision. a. of this subdivision so long as the period of time spent on the short term limited duration health insurance policy or policies does not exceed 12 months.

(3) Method of crediting coverage. --

a. Standard method. -- Except as otherwise provided under sub-subdivision b. of this subdivision for the purposes of applying subdivision (a)(3) of this subsection, a group health insurer shall count a period of creditable coverage without regard to the specific benefits covered during the period.

b. Election of alternative method. -- A group health insurer may elect to apply subdivision (a)(3) of this subsection based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations rather than as provided under sub-subdivision a. of this subdivision. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

c. Health insurer notice. -- In the case of an election under sub-subdivision b. of this subdivision with respect to health insurance coverage in the small or large group market, the health insurer: (i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the health insurer has made the election, and (ii) shall include in the statements a description of the effect of the election.

(4) Establishment of period. -- Periods of creditable coverage for an individual shall be established through presentation of certifications described in subsection (c) of this section or in another manner that is specified in federal regulations.

(d) Exceptions. --

(1) Exclusion not applicable to certain newborns. -- Subject to subdivision (4) of this subsection, a group health insurer shall not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the individual's date of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children. -- Subject to subdivision (4) of this subsection, a group health insurer shall not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence does

not apply to coverage before the date of the adoption or placement for adoption.

- (3) Exclusion not applicable to pregnancy. -- A group health insurer shall not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

- (4) Loss if break in coverage. -- Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(e) Certifications and Disclosure of Coverage. --

- (1) Requirement for certification of period of creditable coverage. --

a. In general. -- A group health insurer shall provide the certification described in sub-subdivision b. of this subdivision: (i) at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision, (ii) in the case of an individual becoming covered under a COBRA continuation provision, at the time the individual ceases to be covered under the COBRA continuation provision, and (iii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) or (ii) of this sub-subdivision, whichever is later.

The certification under clause (i) of this sub-subdivision may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

b. Certification. -- The certification described in this sub-subdivision is a written certification of: (i) the period of creditable coverage of the individual under the plan and any coverage under the COBRA continuation provision, and (ii) any waiting period and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.

- (2) Disclosure of information on previous benefits. -- In the case of an election described in sub-subdivision (c)(3)b. of this subsection by a group health insurer, if the health insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under subdivision (1) of this subsection:

a. Upon request of the health insurer, the entity that issued the certification provided by the individual shall promptly disclose to the requesting plan or health insurer information on coverage of classes and categories of health benefits available under the entity's coverage.

b. The entity may charge the requesting plan or health insurer for the reasonable cost of disclosing the information.

(f) Special Enrollment Periods. --

- (1) Individuals losing other coverage. -- A group health insurer shall permit an employee who is eligible, but not enrolled, for

coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

- a. The employee or dependent was covered under an ERISA group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.
- b. The employee stated in writing at the time that coverage under the group health plan or health insurance coverage was the reason for declining enrollment, but only if the health insurer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time.
- c. The employee's or dependent's coverage described in sub-subdivision a.: (i) was under a COBRA continuation provision and the coverage under the provision was exhausted; (ii) was not under that provision and either the coverage was terminated because of loss of eligibility for the coverage, including legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment; or (iii) employer contributions toward the coverage were terminated.
- d. Under the terms of the plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in sub-subdivision c.(i) of this subdivision or termination of coverage or employer contribution described in sub-subdivision c.(ii) of this subdivision.

(2) For dependent beneficiaries. --

- a. In general. -- If: (i) a group health insurance plan makes coverage available with respect to a dependent of an individual, (ii) the individual is a participant under the plan (or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period), and (iii) a person becomes the dependent of the individual through marriage, birth, or adoption or placement for adoption.

The plan shall provide for a dependent special enrollment period described in sub-subdivision b. of this subdivision during which the person (or, if not otherwise enrolled, the individual) may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

- b. Dependent special enrollment period. -- A dependent special enrollment period under this sub-subdivision shall be a period of not less than 30 days and shall begin on the later of: (i)

the date dependent coverage is made available, or (ii) the date of the marriage, birth, or adoption or placement for adoption described in sub-subdivision a.(iii) of this subdivision.

- c. No waiting period. -- If an individual seeks to enroll a dependent during the first 30 days of the dependent's special enrollment period, the coverage of the dependent shall become effective: (i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received; (ii) in the case of a dependent's birth, as of the date of the birth; or (iii) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

(g) Use of Affiliation Period by HMO as Alternative to Preexisting Condition Exclusion. --

- (1) In general. -- A health maintenance organization that does not impose any preexisting condition exclusion allowed under subsection (a) of this section with respect to any particular coverage option may impose an affiliation period for the coverage option, but only if:

- a. The period is applied uniformly without regard to any health status-related factors.
b. The period does not exceed two months (or three months in the case of a late enrollee).

(2) Affiliation period. --

- a. Defined. -- For the purposes of this Subpart, 'affiliation period' means a period that, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The health maintenance organization is not required to provide health care services or benefits during the period and no premium shall be charged to the participant or beneficiary for any coverage during the period.

- b. Beginning. -- The period shall begin on the enrollment date.

- c. Runs concurrently with waiting periods. -- An affiliation period under a plan shall run concurrently with any waiting period under the plan.

- (3) Alternative methods. -- A health maintenance organization described in subdivision (1) of this subsection may use alternative methods, as approved by the Commissioner, from those described in that subdivision, to address adverse selection.

"§ 58-68-35. Prohibiting discrimination against individual participants and beneficiaries based on health status.

(a) In Eligibility To Enroll. --

- (1) In general. -- Subject to subdivision (2) of this subsection, a group health insurer shall not establish rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the health insurer's plan based on any of the

following health status-related factors in relation to the individual or a dependent of the individual:

- a. Health status.
- b. Medical condition (including both physical and mental illnesses).
- c. Claims experience.
- d. Receipt of health care.
- e. Medical history.
- f. Genetic information.
- g. Evidence of insurability (including conditions arising out of acts of domestic violence).
- h. Disability.

(2) No application to benefits or exclusions. -- To the extent consistent with G.S. 58-68-30, subdivision (1) of this subsection shall not be construed:

- a. To require a group health insurance plan to provide particular benefits other than those provided under the terms of the plan, or
- b. To prevent the plan from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan.

(3) Construction. -- For the purposes of subdivision (1) of this subsection, rules for eligibility to enroll under a plan include rules defining any applicable waiting periods for the enrollment.

(b) In Premium Contributions. --

(1) In general. -- A group health insurance plan shall not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of individual.

(2) Construction. -- Nothing in subdivision (1) of this subsection shall be construed:

- a. To restrict the amount that an employer may be charged for coverage under a group health insurance plan; or
- b. To prevent a group health insurer from establishing premium discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

"Subpart 2. Health Insurance Availability and Renewability.

"§ 58-68-40. Guaranteed availability of coverage for employers in the small group market.

(a) Issuance of Coverage in the Small Group Market. --

(1) In general. -- Subject to subsections (c) through (f) of this section, each health insurer that offers health insurance coverage in the small group market in this State:

- a. Must accept every small employer that applies for the coverage; and
 - b. Must accept for enrollment under the coverage every eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health insurance plan and shall not place any restriction that is inconsistent with G.S. 58-68-35 on an eligible individual being a participant or beneficiary.
- (2) Eligible individual defined. -- For the purposes of this section, 'eligible individual' means, with respect to a health insurer that offers health insurance coverage to a small employer in the small group market, such an individual in relation to the employer as shall be determined:
 - a. In accordance with the terms of the plan,
 - b. As provided by the health insurer under rules of the health insurer that are uniformly applicable in this State to small employers in the small group market, and
 - c. In accordance with all applicable State laws governing the health insurer and the market.
- (b) Special Rules for Network Plans. --
 - (1) In general. -- In the case of a health insurer that offers health insurance coverage in the small group market through a network plan, the health insurer may:
 - a. Limit the employers that may apply for coverage to those with eligible individuals who live, work, or reside in the service area for the network plan; and
 - b. Within the service area of the network plan, deny coverage to the employers if the health insurer has demonstrated to the Commissioner that: (i) it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees, and (ii) it is applying this subdivision uniformly to all employers without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to the employees and dependents.
 - (2) 180-day suspension upon denial of coverage. -- A health insurer, upon denying health insurance coverage in any service area in accordance with sub-subdivision (1)b. of this subsection, shall not offer coverage in the small group market within the service area for a period of 180 days after the date the coverage is denied.
- (c) Application of Financial Capacity Limits. --
 - (1) In general. -- A health insurer may deny health insurance coverage in the small group market if the health insurer has demonstrated to the Commissioner that:
 - a. It does not have the financial reserves necessary to underwrite additional coverage; and

b. It is applying this subdivision uniformly to all employers in the small group market in the State consistent with this Chapter and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to the employees and dependents.

(2) 180-day suspension upon denial of coverage. -- A health insurer upon denying health insurance coverage in accordance with subdivision (1) of this subsection shall not offer coverage in the small group market in the State for a period of 180 days after the date the coverage is denied or until the health insurer has demonstrated to the Commissioner that the health insurer has sufficient financial reserves to underwrite additional coverage, whichever is later. The Commissioner may apply this subsection on a service-area-specific basis.

(d) Exception to Requirement for Failure to Meet Certain Minimum Participation or Contribution Rules. --

(1) In general. -- Subsection (a) of this section does not preclude a health insurer from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in connection with a group health insurance plan in the small group market, as allowed under this Chapter.

(2) Rules defined. -- For the purposes of subdivision (1) of this subsection:

a. 'Employer contribution rule' means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries; and

b. 'Group participation rule' means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer.

(e) Exception for Coverage Offered Only to Bona Fide Association Members. -- Subsection (a) of this section does not apply to:

(1) Health insurance coverage offered by a health insurer if the coverage is made available in the small group market only through one or more bona fide associations.

(2) A self-employed individual as defined in G.S. 58-50-110(21a).

"§ 58-68-45. Guaranteed renewability of coverage for employers in the group market.

(a) In General. -- Except as provided in this section, if a health insurer offers health insurance coverage in the small or large group market, the health insurer must renew or continue in force the coverage at the option of the employer.

(b) General Exceptions. -- A health insurer may nonrenew or discontinue health insurance coverage in the small or large group market based only on one or more of the following:

(1) Nonpayment of premiums. -- The policyholder has failed to pay premiums or contributions in accordance with the terms of the

health insurance coverage or the health insurer has not received timely premium payments.

- (2) Fraud. -- The policyholder has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.
 - (3) Violation of participation or contribution rules. -- The policyholder has failed to comply with a material plan provision relating to employer contribution or group participation rules, as permitted under G.S. 58-68-40(e) in the case of the small group market or pursuant to this Chapter in the case of the large group market.
 - (4) Termination of coverage. -- The health insurer is ceasing to offer coverage in the market in accordance with subsection (c) of this section and this Chapter.
 - (5) Movement outside service area. -- In the case of a health insurer that offers health insurance coverage in the market through a network plan, there is no longer any enrollee in connection with the network plan who lives, resides, or works in the service area of the health insurer or in the area for which the health insurer is authorized to do business and, in the case of the small group market, the health insurer would deny enrollment with respect to the network plan under G.S. 58-68-40(c)(1)a.
 - (6) Association membership ceases. -- In the case of health insurance coverage that is made available in the small or large group market only through one or more bona fide associations, the membership of an employer in the association, on the basis of which the coverage is provided, ceases but only if the coverage is terminated under this subdivision uniformly without regard to any health status-related factor relating to any covered individual.
- (c) Requirements for Uniform Termination of Coverage. --
- (1) Particular type of coverage not offered. -- In any case in which a health insurer decides to discontinue offering a particular type of group health insurance coverage offered in the small or large group market, coverage of the type may be discontinued by the health insurer in accordance with this Chapter in the market only if:
 - a. The health insurer provides notice to each policyholder provided coverage of this type in the market and to the participants and beneficiaries covered under the coverage of the discontinuation at least 90 days before the date of the discontinuation of the coverage;
 - b. The health insurer offers to each policyholder provided coverage of this type in the market the option to purchase all, or in the case of the large group market, any other health insurance coverage currently being offered by the health insurer to a group health insurance plan in the market; and
 - c. In exercising the option to discontinue coverage of this type and in offering the option of coverage under sub-subdivision b. of this subdivision, the health insurer acts uniformly

without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

(2) Discontinuance of all coverage. --

- a. In general. -- In any case in which a health insurer elects to discontinue offering all health insurance coverage in the small group market or the large group market, or both markets, in this State, health insurance coverage may be discontinued by the health insurer only in accordance with this Chapter and if: (i) the health insurer provides notice to the Commissioner and to each policyholder and to the participants and beneficiaries covered under the coverage of the discontinuation at least 180 days before the date of the discontinuation of the coverage; and (ii) all health insurance issued or delivered for issuance in this State in the market or markets are discontinued and coverage under the health insurance coverage in the market or markets is not renewed.
- b. Prohibition on market reentry. -- In the case of a discontinuation under sub-subdivision a. of this subdivision in a market, the health insurer shall not provide for the issuance of any health insurance coverage in that market in this State during the five-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) Exception for Uniform Modification of Coverage. -- At the time of coverage renewal, a health insurer may modify the health insurance coverage for a product offered to a group health insurance plan:

- (1) In the large group market; or
- (2) In the small group market if, for coverage that is available in the market other than only through one or more bona fide associations, the modification is consistent with this Chapter and effective on a uniform basis among group health insurance plans with that product.

(e) Application to Coverage Offered Only Through Associations. -- In applying this section in the case of health insurance coverage that is made available by a health insurer in the small or large group market to employers only through one or more associations, a reference to 'policyholder' is deemed, with respect to coverage provided to an employer member of the association, to include a reference to the employer.

"§ 58-68-50. Disclosure of information.

(a) Disclosure of Information by Health Insurers. -- In connection with the offering of any health insurance coverage to a small employer, a health insurer:

- (1) Shall make a reasonable disclosure to the employer, as part of its solicitation and sales materials, of the availability of information described in subsection (b) of this section, and
- (2) Shall upon request of the small employer, provide the information.

(b) Information Described. --

(1) In general. -- Subject to subdivision (3) of this subsection, with respect to a health insurer offering health insurance coverage to a small employer, information described in this subsection is information concerning:

a. The provisions of the coverage concerning the health insurer's right to change premium rates and the factors that may affect changes in premium rates;

b. The provisions of the coverage relating to renewability of coverage;

c. The provisions of the coverage relating to any preexisting condition exclusion; and

d. The benefits and premiums available under all health insurance coverage for which the employer is qualified.

(2) Form of information. -- Information under this subsection shall be provided to small employers in a manner determined to be understandable by the average small employer, and shall be sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage.

(3) Exception. -- A health insurer is not required under this section to disclose any information that is proprietary and trade secret information under applicable law.

"Subpart 3. Exclusion of Plans.

"§ 58-68-55. Exclusion of certain plans.

(a) Exception for Certain Benefits. -- The requirements of Subparts 1 and 2 of this Part do not apply to any group health insurance coverage in relation to its provision of excepted benefits described in G.S. 58-68-25(b)(1).

(b) Exception for Certain Benefits if Certain Conditions Met. --

(1) Limited, excepted benefits. -- The requirements of Subparts 1 and 2 of this Part do not apply to any group health insurance plan in relation to its provision of excepted benefits described in G.S. 58-68-25(b)(2) if the benefits:

a. Are provided under a separate policy, certificate, or contract of insurance; or

b. Are otherwise not an integral part of the plan.

(2) Noncoordinated, excepted benefits. -- The requirements of Subparts 1 and 2 of this Part do not apply to any group health insurance plan in relation to its provision of excepted benefits described in G.S. 58-68-25(b)(3) if all of the following conditions are met:

a. The benefits are provided under a separate policy, certificate, or contract of insurance.

b. There is no coordination between the provision of the benefits and any exclusion of benefits under any group health insurance plan maintained by the same policyholder.

c. The benefits are paid with respect to an event without regard to whether benefits are provided with respect to that event

under any group health insurance plan maintained by the same policyholder.

- (3) Supplemental, excepted benefits. -- The requirements of this Part do not apply to any group health insurance plan in relation to its provision of excepted benefits described in G.S. 58-68-25(b)(4) if the benefits are provided under a separate policy, certificate, or contract of insurance.

"Part B -- Individual Market Reforms.

"§ 58-68-60. Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.

(a) Guaranteed Availability. --

- (1) In general. -- Subject to the succeeding subsections of this section, each health insurer that offers health insurance coverage in the individual market in this State shall not, with respect to an eligible individual desiring to enroll in individual health insurance coverage:

- a. Decline to offer the coverage to, or deny enrollment of, the individual; or
- b. Impose any preexisting condition exclusion with respect to the coverage.

(b) Eligible Individual Defined. -- In this Part, 'eligible individual' means an individual:

- (1) (i) For whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and (ii) whose most recent prior creditable coverage was under an ERISA group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any such plan);
- (2) Who is not eligible for coverage under (i) an ERISA group health plan, (ii) part A or part B of title XVIII of the Social Security Act, or (iii) a State plan under title XIX of the Act (or any successor program), and does not have other health insurance coverage;
- (3) With respect to whom the most recent coverage within the coverage period described in subdivision (1)(i) was not terminated based on a factor described in G.S. 58-68-45(b)(1) or (b)(2);
- (4) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under Article 53 of this Chapter, who elected the coverage; and
- (5) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program.

(c) Alternative Coverage Permitted. --

- (1) In general. -- In the case of health insurance coverage offered in this State, a health insurer may elect to limit the coverage offered under subsection (a) of this section as long as it offers at least two different policy forms of health insurance coverage both of which:

- a. Are designed for, made generally available to, and actively marketed to, and enroll both eligible and other individuals by the health insurer; and
- b. Meet the requirement of subdivision (2) or (3) of this subsection, as elected by the health insurer.

For the purposes of this subsection, policy forms that have different cost-sharing arrangements or different riders shall be considered to be different policy forms.

- (2) Choice of most popular policy forms. -- The requirement of this subdivision is met, for health insurance coverage policy forms offered by a health insurer in the individual market, if the health insurer offers the policy forms for individual health insurance coverage with the largest, and next to largest, premium volume of all the policy forms offered by the health insurer in this State or applicable marketing or service area (as may be prescribed by rules or regulations) by the health insurer in the individual market in the period involved.

- (3) Choice of two policy forms with representative coverage. --

- a. In general. -- The requirement of this subdivision is met, for health insurance coverage policy forms offered by a health insurer in the individual market, if the health insurer offers a lower-level coverage policy form (as described in sub-subdivision b. of this subdivision) and a higher-level coverage policy form (as described in sub-subdivision c. of this subdivision) each of which includes benefits substantially similar to other individual health insurance coverage offered by the health insurer in this State.

- b. Lower-level of coverage described. -- A policy form is described in this sub-subdivision if the actuarial value of the benefits under the coverage is at least eighty-five percent (85%) but not greater than one hundred percent (100%) of a weighted average (described in sub-subdivision d. of this subdivision).

- c. Higher-level of coverage described. -- A policy form is described in this sub-subdivision if: (i) the actuarial value of the benefits under the coverage is at least fifteen percent (15%) greater than the actuarial value of the coverage described in sub-subdivision b. of this subdivision offered by the health insurer in the area involved; and (ii) the actuarial value of the benefits under the coverage is at least one hundred percent (100%) but not greater than one hundred twenty percent (120%) of a weighted average (described in sub-subdivision d. of this subdivision).

- d. Weighted average. -- For the purposes of this subdivision, the weighted average described in this sub-subdivision is the average actuarial value of the benefits provided by all the health insurance coverage issued, as elected by the health insurer, either by that health insurer or by all health insurers in this State in the individual market during the previous

year, not including coverage issued under this section, weighted by enrollment for the different coverage.

- (4) Election. -- The health insurer elections under this subsection shall apply uniformly to all eligible individuals in this State for that health insurer. The election shall be effective for policies offered during a period of not less than two years.

- (5) Assumptions. -- For the purposes of subdivision (3) of this subsection, the actuarial value of benefits provided under individual health insurance coverage shall be calculated based on a standardized population and a set of standardized utilization and cost factors.

(d) Special Rules for Network Plans. --

- (1) In general. -- In the case of a health insurer that offers health insurance coverage in the individual market through a network plan, the health insurer may:

- a. Limit the individuals who may be enrolled under the coverage to those who live, reside, or work within the service area for the network plan; and
- b. Within the service area of the plan, deny the coverage to the individuals if the health insurer has demonstrated to the Commissioner that: (i) it will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contract holders and enrollees and individual enrollees, and (ii) it is applying this subdivision uniformly to individuals without regard to any health status-related factor of the individuals and without regard to whether the individuals are eligible individuals.

- (2) 180-day suspension upon denial of coverage. -- A health insurer, upon denying health insurance coverage in any service area in accordance with sub-subdivision (1)b. of this subdivision, shall not offer coverage in the individual market within the service area for a period of 180 days after the coverage is denied.

(e) Application of Financial Capacity Limits. --

- (1) In general. -- A health insurer may deny health insurance coverage in the individual market to an eligible individual if the health insurer has demonstrated to the Commissioner that:

- a. It does not have the financial reserves necessary to underwrite additional coverage; and
- b. It is applying this subdivision uniformly to all individuals in the individual market in this State consistent with this Chapter and without regard to any health status-related factor of the individuals and without regard to whether the individuals are eligible individuals.

- (2) 180-day suspension upon denial of coverage. -- A health insurer, upon denying individual health insurance coverage in any service area in accordance with subdivision (1) of this subsection, shall not offer the coverage in the individual market within the service area for a period of 180 days after the date the coverage is denied or until the health insurer has demonstrated to the Commissioner

that the health insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.

(f) Market Requirements. --

(1) In general. -- Subsection (a) of this section does not require that a health insurer offering health insurance coverage only in connection with ERISA group health plans or through one or more bona fide associations, or both, offer the health insurance coverage in the individual market.

(2) Conversion policies. -- A health insurer offering health insurance coverage in connection with group health plans under title XXVII of the federal Public Health Service Act shall not be deemed to be a health insurer offering individual health insurance coverage solely because the health insurer offers a conversion policy.

(g) Construction. -- Nothing in this section shall be construed:

(1) To restrict the amount of the premium rates that a health insurer may charge an individual for health insurance coverage provided in the individual market under this Chapter; or

(2) To prevent a health insurer offering health insurance coverage in the individual market from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(h) Other Definitions. -- As used in this section:

(1) 'Church plan'. -- The meaning given the term under section 3(33) of the Employee Retirement Income Security Act of 1974.

(2) 'Governmental plan'. --

a. The meaning given the term under section 3(32) of the Employee Retirement Income Security Act of 1974 and any federal governmental plan.

b. Federal governmental plan. -- A governmental plan established or maintained for its employees by the government of the United States or by any agency or instrumentality of the government.

c. Nonfederal governmental plan. -- A governmental plan that is not a federal governmental plan.

"§ 58-68-65. Guaranteed renewability of individual health insurance coverage.

(a) In General. -- Except as provided in this section, a health insurer that provides individual health insurance coverage to an individual shall renew or continue in force the coverage at the option of the individual.

(b) General Exceptions. -- A health insurer may nonrenew or discontinue health insurance coverage of an individual in the individual market based only on one or more of the following:

(1) Nonpayment of premiums. -- The individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the health insurer has not received timely premium payments.

(2) Fraud. -- The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

- (3) Termination of plan. -- The health insurer is ceasing to offer coverage in the individual market in accordance with subsection (c) of this section and this Chapter.
- (4) Movement outside service area. -- In the case of a health insurer that offers health insurance coverage in the market through a network plan, the individual no longer resides, lives, or works in the service area (or in an area for which the health insurer is authorized to do business) but only if the coverage is terminated under this subdivision uniformly without regard to any health status-related factor of covered individuals.
- (5) Association membership ceases. -- In the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, the membership of the individual in the association (on the basis of which the coverage is provided) ceases but only if the coverage is terminated under this subdivision uniformly without regard to any health status-related factor of covered individuals.
- (c) Requirements for Uniform Termination of Coverage. --

 - (1) Particular type of coverage not offered. -- In any case in which a health insurer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of the type may be discontinued by the health insurer only if:

 - a. The health insurer provides notice, notwithstanding G.S. 58-51-20 or G.S. 58-65-60(c)(3)b., to each covered individual provided coverage of this type in the market of the discontinuation at least 90 days before the date of the discontinuation of the coverage;
 - b. The health insurer offers to each individual in the individual market provided coverage of this type, the option to purchase any other individual health insurance coverage currently being offered by the health insurer for individuals in the market; and
 - c. In exercising the option to discontinue coverage of this type and in offering the option of coverage under sub-subdivision b. of this subdivision, the health insurer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for the coverage.
 - (2) Discontinuance of all coverage. --

 - a. In general. -- Subject to sub-subdivision c. of this subdivision, in any case in which a health insurer elects to discontinue offering all health insurance coverage in the individual market in this State, health insurance coverage may be discontinued by the health insurer only if: (i) the health insurer provides notice to the Commissioner and to each individual of the discontinuation at least 180 days before the date of the expiration of the coverage, and (ii) all health insurance coverage issued or delivered for issuance in this

State in the market is discontinued and the health insurance coverage in the market is not renewed.

- b. Prohibition on market reentry. -- In the case of a discontinuation under sub-subdivision a. of this subdivision in the individual market, the health insurer shall not provide for the issuance of any health insurance coverage in the market and this State during the five-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) Exception for Uniform Modification of Coverage. -- At the time of coverage renewal, a health insurer may modify the health insurance coverage for a policy form offered to individuals in the individual market as long as the modification is consistent with State law and effective on a uniform basis among all individuals with that policy form.

(e) Application to Coverage Offered Only Through Associations. -- In applying this section in the case of health insurance coverage that is made available by a health insurer in the individual market to individuals only through one or more associations, a reference to an 'individual' is deemed to include a reference to the association of which the individual is a member.

"§ 58-68-70. Certification of coverage.

G.S. 58-68-30(e) applies to health insurance coverage offered by a health insurer in the individual market in the same manner that it applies to health insurance coverage offered by a health insurer in the small or large group market.

"§ 58-68-75. General exceptions.

(a) Exception for Certain Benefits. -- This Part does not apply to any health insurance coverage in relation to its provision of excepted benefits described in G.S. 58-68-25(b)(1).

(b) Exception for Certain Benefits if Certain Conditions Met. -- This Part does not apply to any health insurance coverage in relation to its provision of excepted benefits described in G.S. 58-68-25(b)(2), (3), or (4) if the benefits are provided under a separate policy, certificate, or contract of insurance."

Section 2. G.S. 58-50-110 reads as rewritten:

"§ 58-50-110. Definitions.

As used in this Act:

(1) 'Accountable health carrier' means that as defined in G.S. 143-622(1).

(1a) 'Actuarial certification' means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Commissioner that a small employer carrier is in compliance with the provisions of G.S. 58-50-130, and to the extent applicable, the provisions of Article 68 of this Chapter, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

- (1b) 'Adjusted community rating' means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for the following demographic factors: age, gender, family composition, and geographic areas, as determined pursuant to G.S. 58-50-130(b).
- (2) Repealed by Session Laws 1993, c. 529, s. 3.3.
- (3) 'Basic health care plan' means a health care plan for small employers that is lower in cost than a standard health care plan and is required to be offered by all small employer carriers pursuant to G.S. 58-50-125 and approved by the Commissioner in accordance with G.S. 58-50-125.
- (4) 'Board' means the board of directors of the Pool.
- (5) 'Carrier' means any person that provides one or more health benefit plans in this State, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization (HMO), and a multiple employer welfare arrangement.
- (5a) 'Case characteristics' means the demographic factors age, gender, family size, and geographic location.
- (6), (7) Repealed by Session Laws 1993, c. 529, s. 3.3.
- (8) 'Committee' means the Small Employer Carrier Committee as created by G.S. 58-50-120.
- (9) 'Dependent' means the spouse or child of an eligible employee, subject to applicable terms of the health care plan covering the employee.
- (10) 'Eligible employee' means an employee who works for a small employer on a full-time basis, with a normal work week of 30 or more hours, including a sole proprietor, a partner or a partnership, or an independent contractor, if included as an employee under a health care plan of a small employer; but does not include employees who work on a part-time, temporary, or substitute basis.
- (11) 'Health benefit plan' means any accident and health insurance policy or certificate; nonprofit hospital or medical service corporation contract; health, hospital, or medical service corporation plan contract; HMO subscriber contract; plan provided by a MEWA or plan provided by another benefit arrangement, to the extent permitted by ERISA, subject to G.S. 58-50-115. ~~Health benefit plan does not mean accident only, specified disease only, fixed indemnity, credit, or disability insurance; coverage of Medicare services pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; dental only or vision only insurance; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability~~

~~insurance policy or equivalent self-insurance. include benefits described in G.S. 58-68-25(b).~~

- (12) 'Impaired insurer' has the same meaning as prescribed in G.S. 58-62-20(6) or G.S. 58-62-16(8).
- (13) Repealed by Session Laws 1993, c. 529, s. 3.3.
- (14) 'Late enrollee' means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the end of the initial enrollment period provided under the terms of the health benefit plan in effect at the time the employee first became eligible; provided that the initial enrollment period shall be a period of at least 30 consecutive calendar days. However, an eligible employee or dependent shall not be considered a late enrollee if:
 - a. The individual was covered under a public or private health benefit plan that provided, at the time the individual was eligible to enroll, benefits equal to or exceeding the same required level of benefits in the basic and or standard health care plans adopted pursuant to G.S. 58-50-120 and either the individual:
 - 1. Lost coverage under another health plan as a result of termination of employment, termination of a spouse's health plan coverage, or the death of a spouse or divorce and requests enrollment in a basic or standard health care plan health benefit plan within 30 days after termination of coverage provided under another health plan; or
 - 2. Stated, in writing, during the enrollment period that coverage under another employer health benefit plan was the reason for declining coverage;
 - 3, 4. Repealed by Session Laws 1993, c. 529, s. 3.3.
 - b. The individual elects a different health plan offered through the Alliance during an open enrollment period;
 - c. An eligible employee requests enrollment within 30 days of becoming an employee of a member small employer;
 - d. A court has ordered coverage be provided for a spouse or minor child under a covered employee's health benefit plan and the request for enrollment for a spouse is made within 30 days after issuance of the court order; order. A minor child shall be enrolled in accordance with the requirements of G.S. 58-51-120; or
 - e. The individual or employee enrollee makes a request for enrollment of the spouse or child within 30 days of after the individual individual's or employee's marriage or the birth or adoption birth, adoption, or placement for adoption of a child.
- (15) Repealed by Session Laws 1993, c. 529, s. 3.3.
- (16) 'Pool' means the North Carolina Small Employer Health Reinsurance Pool created in G.S. 58-50-150.

- (17) ~~'Preexisting-conditions provision' means a policy provision that limits or excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, for a condition that, during a specified period immediately preceding the effective date of coverage, had manifested itself in a manner that would cause an ordinary prudent person to seek diagnosis, care, or treatment, or for which medical advice, diagnosis, care, or treatment was recommended or received as to that condition or as to pregnancy existing on the effective date of coverage. preexisting-condition provision as defined in G.S. 58-68-30.~~
- (18) 'Premium' includes insurance premiums or other fees charged for a health benefit plan, including the costs of benefits paid or reimbursements made to or on behalf of persons covered by the plan.
- (19) 'Rating period' means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.
- (20) 'Risk-assuming carrier' means a small employer carrier electing to comply with the requirements set forth in G.S. 58-50-140.
- (21) 'Reinsuring carrier' means a small employer carrier electing to comply with the requirements set forth in G.S. 58-50-145.
- (21a) 'Self-employed individual' means an individual or sole proprietor who derives a majority of his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS form 1040, Schedule C or F and which generated taxable income in one of the two previous years.
- (22) 'Small employer' means any individual actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than 49 50 eligible employees, the majority of whom are employed within this State, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this State, shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, the provisions of this Act that apply to a small employer shall continue to apply until the plan anniversary following the date the small employer no longer meets the requirements of this definition. For purposes of this Act, the term small employer includes self-employed individuals.
- (23) 'Small employer carrier' means any carrier that offers health benefit plans covering eligible employees of one or more small employers.

- (24) 'Standard health care plan' means a health care plan for small employers required to be offered by all small employer carriers under G.S. 58-50-125 and approved by the Commissioner in accordance with G.S. 58-50-125."

Section 3. G.S. 58-50-125(c) reads as rewritten:

"(c) The Except as provided under Article 68 of this Chapter, the plans developed under this section are not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider."

Section 4. G.S. 58-50-125(g) reads as rewritten:

"(g) No HMO operating as either a risk-assuming carrier or a reinsuring carrier is required to offer coverage or accept applications under subsection (d) of this section in the case of any of the following:

- (1) To a group that is not physically located in the HMO's approved service areas;
- (2) To an employee who does not reside within the HMO's approved service areas;
- (3) Within an area, where the HMO can reasonably anticipate, and demonstrate, to the Commissioner's satisfaction, that it will not have the capacity within that area and its network of providers to deliver services adequately to the enrollees of those groups because of its obligations to existing group contract holders and enrollees.

An HMO that does not offer coverage pursuant to subdivision (3) of this subsection may not offer coverage in the applicable area to new employer groups with more than 49 eligible employees until the later of 90 days after that closure or the date on which the carrier notifies the Commissioner that it has regained capacity to deliver services to small employers."

Section 5. G.S. 58-50-130(a) reads as rewritten:

"(a) Health benefit plans covering small employers are subject to the following provisions:

- (1) ~~Except in the case of a late enrollee, any preexisting conditions provision may not limit or exclude coverage for a period beyond 12 months following the insured's initial effective date of coverage and must define preexisting conditions as "those conditions for which medical advice or treatment was received or recommended or that could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage".~~
- (2) ~~In determining whether a preexisting conditions provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a previous health benefit plan if the previous coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the plan. As used in this subdivision with respect to previous coverage, the meaning of "health benefit plan" is not limited to the definition in G.S. 58-50-115, but includes any health benefit plan provided by a health insurer, as that term is defined in G.S.~~

~~58-51-115(a), or any government plan or program providing health benefits or health care.~~

(3) ~~The health benefit plan is renewable with respect to all eligible employees or dependents at the option of the policyholder or contract holder except:~~

- ~~a. For nonpayment of the required premiums by the policyholder or contract holder;~~
- ~~b. For fraud or misrepresentation of the policyholder or contract holder or, with respect to coverage of individual enrollees, the enrollees, or their representatives;~~
- ~~c. For noncompliance with plan provisions that have been approved by the Commissioner;~~
- ~~d. When the number of enrollees covered under the plan is less than the number of insureds or percentage of enrollees required by participation requirements under the plan; or~~
- ~~e. When the policyholder or contract holder is no longer actively engaged in the business in which it was engaged on the effective date of the plan.~~
- ~~f. When the small employer carrier stops writing new business in the small employer market, if:~~
 - ~~1. It provides notice to the Department and either to the policyholder, contract holder, or employer, of its decision to stop writing new business in the small employer market; and~~
 - ~~2. It does not cancel health benefit plans subject to this Act for 180 days after the date of the notice required under paragraph 1; and for that business of the carrier that remains in force, the carrier shall continue to be governed by this Act with respect to business conducted under this Act.~~

~~A small employer carrier that stops writing new business in the small employer market in this State after January 1, 1992, shall be prohibited from writing new business in the small employer market in this State for a period of five years from the date of notice to the Commissioner. In the case of an HMO doing business in the small employer market in one service area of this State, the rules set forth in this subdivision shall apply to the HMO's operations in the service area, unless the provisions of G.S. 58-50-125(g) apply.~~

- (4) ~~Late enrollees may be excluded from coverage for the greater of 18 months or an 18-month preexisting-condition exclusion; however, if both a period of exclusion from coverage and a preexisting-condition exclusion are applicable to a late enrollee, the combined period shall not exceed 18 months. If a period of exclusion from coverage is applied, a late enrollee shall be enrolled at the end of such period in the health benefit plan currently held by the small employer.~~
- (4a) A carrier may continue to enforce reasonable employer participation and contribution requirements on small employers

applying for coverage; however, participation and contribution requirements may vary among small employers only by the size of the small employer group and shall not differ because of the health benefit plan involved. In applying minimum participation requirements to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether an applicable participation level is met. 'Qualifying existing coverage' means benefits or coverage provided under: (i) Medicare, Medicaid, and other government funded programs; or (ii) an employer-based health insurance or health benefit arrangement, including a self-insured plan, that provides benefits similar to or in excess of benefits provided under the basic health care plan. An accountable health carrier shall not enforce participation or contribution requirements on member small employers, as defined in G.S. 143-622(18), unless those requirements meet with the standards adopted by the State Health Plan Purchasing Alliance Board.

- (5) Notwithstanding any other provision of this Chapter, no small employer carrier, insurer, subsidiary ~~or of~~ an insurer, or controlled individual of an insurance holding company shall act as an administrator or claims paying agent, as opposed to an insurer, on behalf of small groups which, if they purchased insurance, would be subject to this section. No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall provide stop loss, catastrophic, or reinsurance coverage to small employers that does not comply with the underwriting, rating, and other applicable standards in this Act.
- (6) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group except in the case of late enrollees as provided in G.S. 58-50-130(a)(4).
- ~~(7) A small employer carrier shall not modify any health benefit plan with respect to a small employer, any eligible employee, or dependent through riders, endorsements, or otherwise, in order to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.~~
- ~~(8) In the case of an eligible employee or dependent of an eligible employee who was excluded from or denied coverage by a small employer carrier on or before August 14, 1992, the small employer carrier shall provide an opportunity for such eligible employee or dependent to enroll in the health benefit plan currently held by the small employer not later than the next plan anniversary on or after August 14, 1992.~~
- (9) The health benefit plan must meet the applicable requirements of Article 68 of this Chapter."

Section 6. G.S. 58-50-130(d) reads as written:

"(d) In connection with the offering for sale of any health benefit plan to a small employer, each small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales ~~materials, of: materials, of the~~ following and shall provide this information to the small employer upon request:

- (1) Repealed by Session Laws 1993, c. 529, s. 3.7.
- (2) Provisions concerning the small employer carrier's right to change premium rates and the factors other than claims experience that affect changes in premium rates.
- (3) Provisions relating to renewability of policies and contracts.
- (4) Provisions affecting any preexisting conditions provision.
- (5) The benefits available and premiums charged under all health benefit plans for which the small employer is eligible."

Section 7. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. ~~Preexisting conditions must be covered no later than one year after the effective date of coverage. are covered under this policy.....(insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions are defined as mean 'those conditions for which medical advice, advice, diagnosis, care, or treatment was received or recommended or that could be medically documented within the one-year period immediately preceding the effective date of the person's coverage.'~~ Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any previous plan. Credit must be given for that portion of the waiting period that was met under the previous plan. As used in this policy, the term "previous plan" includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care. In determining whether a preexisting condition provision applies to an insured person, all health benefit plans must credit the time the person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage. Credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G. S. 58-68-30."

Section 7.1. G.S. 58-51-15 is amended by adding a new subsection to read:

"(h) Preexisting Condition Exclusion Clarification. -- Sub-subdivision (a)(2)b. of this section does not apply to:

- (1) Policies issued to eligible individuals under G.S. 58-68-60.

(2) Excepted benefits as described in G.S. 58-68-25(b)."**Section 8.** G.S. 58-51-80(b) reads as rewritten:

"(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following subdivisions:

- (1) Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall be structured on an actuarially sound basis.
- (1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members ~~members~~, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:
 - a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.
 - b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members.

- c. ~~A policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject the coverage, in writing.~~
- (2) ~~For employer groups of 50 or more persons no evidence of individual insurability may be required at the time the person first becomes eligible for insurance or within 31 days thereafter except for any insurance supplemental to the basic coverage for which evidence of individual insurability may be required. With respect to trustee groups the phrase "groups of 50" must be applied on a participating unit basis for the purpose of requiring individual evidence of insurability.~~
- (3) ~~Policies may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as "those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage." Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any previous plan. Credit must be given for that portion of the waiting period which was met under the previous plan. As used in this subdivision, a "previous plan" includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care. For employer groups of 50 or more persons and for groups under subdivision (1a) of this subsection and under G.S. 58-51-81: In determining whether a preexisting condition provision applies to an eligible employee, association member, student, or to a dependent, all health benefit plans shall credit the time the person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage."~~

Section 9. G.S. 58-51-80(h) reads as rewritten:

"(h) Nothing contained in this section applies to any contract issued by any corporation defined in Article 65 of this Chapter. Subdivision (b)(3) of this section applies to MEWAs, as defined in G.S. 58-49-30(a)."

Section 10. G.S. 58-53-1 reads as rewritten:

"§ 58-53-1. *Definitions.*

As used in this Article, the following terms have the meanings specified:

- (1) 'Group policy' means a group accident and health insurance policy issued by an insurance company and a group contract issued by a health service corporation or health maintenance organization or similar corporation or organization.
- (2) 'Individual policy' or 'converted policy' means an individual health insurance policy issued by an insurance company or an

individual ~~health services~~ contract issued by a ~~health~~ service corporation or health maintenance organization or similar corporation or organization.

- (3) 'Insurance' and 'insured' refer to coverage under a group policy, individual policy or converted policy on a premium-paying basis, and do not include coverage provided by reason of a disability extension.
- (4) 'Insurer' means the entity issuing a group policy or an individual or converted policy.
- (5) 'Medicare' means Title XVIII of the United States Social Security Act as added by the Social Security Amendments of 1965 or as later amended or superseded.
- (5a) 'Member' or 'employee' includes an insured spouse or dependent of a member or of an employee.
- (6) 'Premium' includes any premium or other consideration payable for coverage under a group or individual policy.
- (7) 'Reasonable and customary' means the most frequently used level of charge made for the supplies or for a specific service in the geographic subarea in which such supplies or services are received, of like kind or by physicians, or other practitioners, with similar qualifications."

Section 11. G.S. 58-53-5 reads as rewritten:

"§ 58-53-5. *Continuation of group hospital, surgical, and major medical coverage after termination of employment or membership.*

A group policy delivered or issued for delivery in this State ~~which that~~ insures employees or ~~members, other than the members and their dependents, if they have elected to include them, whose eligibility under the group policy does not extend to any employee(s) the insured may have~~ members for hospital, surgical or major medical insurance on an expense incurred or service basis under ~~Articles 1 through 67 of this Chapter, other than for specific diseases or for accidental injuries only,~~ shall provide that employees or members whose insurance for these types of coverage under the group policy would otherwise terminate because of termination of active employment or membership, or termination of membership in the eligible class or classes under the policy, shall be entitled to continue their hospital, surgical, and medical insurance under that group policy, for themselves and their eligible spouses and dependents with respect to whom they were insured on the date of termination, subject to all of the group policy's terms and conditions ~~applicable to those forms of insurance~~ and to the conditions specified in this Part. Provided, the terms and conditions set forth in this Part are intended as minimum requirements and shall not be construed to impose additional or different requirements upon those group hospital, surgical, or major medical plans ~~already in force, or hereafter placed into effect,~~ that provide continuation benefits equal to or better than those required in this Part."

Section 12. G.S. 58-53-35 reads as rewritten:

"§ 58-53-35. *Termination of continuation.*

(a) Continuation of insurance under the group policy for any person shall terminate on the earliest of the following dates:

- (1) The date ~~one-year~~ 18 months after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or members;
- (2) The date ending the period for which the employee or member last makes his required contribution, if he discontinues his contributions;
- (3) The date the employee or member becomes or is eligible to become covered for similar benefits under any arrangement of coverage for individuals in a group, whether insured or uninsured;
- (4) The date on which the group policy is terminated or, in the case of a multiple employer plan, the date his employer terminates participation under the group master policy. When this occurs the employee or member shall have the privilege described in G.S. 58-53-45 if the date of termination precedes that on which his actual continuation of insurance under that policy would have terminated. The insurer that insured the group ~~prior to before~~ the date of termination shall make a converted policy available to the employee or member.

(b) Notwithstanding subdivision (a)(4) of this section, if the employer replaces the group policy with another group policy, the employee is entitled to continue under the successor group policy for any unexpired period of continuation to which the employee is entitled."

Section 13. G.S. 58-53-50 reads as rewritten:

"§ 58-53-50. *Restrictions.*

A converted policy shall not be available to an employee or member if termination of his insurance under the group policy occurred because:

- (1) Of termination of employment or membership and either he was not entitled to continuation of group coverage under Part 1 of this Article or failed to elect such continuation;
- (2) He failed to make timely payment of any required contribution for the cost of continuation of insurance;
- (3) He had not been continuously covered under the group policy or for similar benefits under any other group policy that it replaced during the period of three consecutive months immediately prior to termination of active employment ending with such termination;
- (4) The group policy terminated or an employer's participation terminated, and the insurance is replaced by similar coverage under another group policy within 31 days of date of termination; or
- (5) He failed to continue his insurance for the entire maximum period of ~~one-year~~ 18 months following termination of active employment as provided for in Part 1 of this Article, unless that failure to continue was because of change of insurer by the employer and the change of insurer was consummated during the one year continuation period. In that event the employee or member shall be entitled to be issued a converted policy by the insurer that provided the group policy to the employer before the change of insurer."

Section 14. G.S. 58-53-55 reads as rewritten:

"§ 58-53-55. Time limit.

In order to be eligible for conversion, written application and the first premium payment for the converted policy must be made to the insurer not later than 31 days after the date of termination of insurance provided under Part 1 of this Article. The effective date of the converted policy shall be the day following the later of:

- (1) The termination of insurance under the group policy when it is not replaced by one providing similar coverage within 31 days of the termination date of the immediately prior group plan; or
- (2) The termination of the one-year period of continued coverage under the group policy or policies."

Section 15. Article 55 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-55-31. Additional requirements.

(a) No policy shall be used in this State unless it provides for an offer of nonforfeiture, which shall not be less than an offer of reduced paid-up insurance benefits, extended term insurance benefits, or a shortened benefit period. No policy shall pay a cash surrender value unless the dividends or refunds are applied as a reduction of future premiums or an increase in future benefits.

(b) The Commissioner shall adopt rules to provide for annual reports by insurers of the number of claims denied, number of rescissions, and the percentage of sales involving the replacement of policies.

(c) No policy shall be used in this State unless the insurer has developed a financial or personal asset suitability test to determine whether or not issuing long-term care insurance to an applicant is appropriate. For purposes of this section:

(1) All insurers except those issuing life insurance that accelerates the death benefit for long-term care shall use the financial or suitability form and format standards as developed and adopted by the NAIC. A personal long-term care worksheet and disclosure notice of issues an applicant should know before buying long-term care insurance shall be completed and provided before an application is taken.

(2) Each applicant that does not meet the recommended financial or personal asset suitability test criteria shall receive a letter of notification and shall be given an option to waive the results of the financial suitability test and proceed with the purchase of the policy.

(d) The Commissioner shall adopt standards to handle consumer complaints about noncompliance with State requirements."

Section 16. G.S. 58-65-25 reads as rewritten:

"§ 58-65-25. Hospital, physician and dentist contracts.

(a) Any corporation organized under the provisions of this Article and Article 66 of this Chapter may enter into contracts for the rendering of hospital service to any of its subscribers by hospitals approved by the American Medical Association and/or the North Carolina Hospital Association, and may enter into contracts for the furnishing of, or the payment in whole or in part for, medical and/or dental services rendered to

any of its subscribers by duly licensed physicians and/or dentists. All obligations arising under contracts issued by such corporations to its subscribers shall be satisfied by payments made directly to the hospitals or hospitals and/or physicians and/or dentists rendering such service, or direct to the subscriber or his, her, or their legal representatives upon the receipt by the corporation from the subscriber of a statement marked paid by the hospital(s) and/or physician(s) and/or dentist(s) or both rendering such service, and all such payments heretofore made are hereby ratified. Nothing herein in this section shall be construed to discriminate against hospitals conducted by other schools of medical practice.

(b) On and after January 1, 1956, all ~~All~~ certificates, plans or contracts issued to subscribers or other persons by hospital and medical and/or dental service corporations operating under this Article and Article 66 of this Chapter shall contain in substance a provision as follows: 'After two years from the date of issue of this certificate, contract or plan no misstatements, except fraudulent misstatements made by the applicant in the application for such certificate, contract or plan, shall be used to void said certificate, contract or plan, or to deny a claim for loss incurred or disability (as therein defined) commencing after the expiration of such two-year period. ~~No claim for loss incurred or disability (as defined in the certificate, contract or plan) commencing after two years from the date of issue of this certificate, contract or plan shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specifically described, effective on the date of loss, had existed prior to the effective date of coverage of this certificate, contract or plan.~~'"

Section 17. G.S. 58-65-60(e) reads as rewritten:

"(e) A hospital service corporation may issue a master group contract with the approval of the Commissioner ~~of Insurance provided such~~ if the contract and the individual certificates issued to members of the group, ~~shall comply group comply~~ in substance to the other provisions of this Article and Article 66 of this Chapter. ~~Any such~~ The contract may provide for the adjustment of the rate of the premium or benefits conferred as provided in ~~said the~~ contract, and in accordance with an adjustment schedule filed with and approved by the ~~Commissioner of Insurance. Commissioner.~~ If ~~such master group the~~ contract is issued, altered or modified, the subscribers' contracts issued ~~in pursuance thereof~~ under that contract are altered or modified accordingly, all laws and clauses in subscribers' contracts to the contrary notwithstanding. Nothing in this Article and Article 66 of this Chapter shall be construed to prohibit or prevent the same. Forms of such contract shall at all times be furnished upon request of subscribers thereto.

- (1) ~~For employer groups of 50 or more persons no evidence of individual insurability may be required at the time the person first becomes eligible for coverage or within 31 days thereafter except for any insurance supplemental to the basic coverage for which evidence of individual insurability may be required. With respect to trustee groups the phrase "groups of 50" must be applied on a participating unit basis for the purpose of requiring individual evidence of insurability.~~

- (2) ~~Employer master group contracts may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as "those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage." Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any previous plan. Credit must be given for that portion of the waiting period which was met under the previous plan. As used in this subdivision, a "previous plan" includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care, except that nothing in this section shall apply to a guaranteed issue product designed for uninsurables. For employer groups of 50 or more persons: In determining whether a preexisting condition provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage.~~

(3) (e1) Employees shall be added to the master group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term 'employee' is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis.

(4) (e2) Whenever an employer master group contract replaces another group contract, whether this contract was issued by a corporation under Articles 1 through 67 of this Chapter, the liability of the succeeding corporation for insuring persons covered under the previous group contract is (i) each person is eligible for coverage in accordance with the succeeding corporation's plan of benefits with respect to classes eligible and activity at work and nonconfinement rules must be covered by the succeeding corporation's plan of benefits; and (ii) each person not covered under the succeeding corporation's plan of benefits in accordance with (i) above must nevertheless be covered by the succeeding corporation if that person was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the person is a member of the class of persons eligible for coverage under the succeeding corporation's plan."

Section 18. G.S. 58-67-85 reads as rewritten:

"§ 58-67-85. Master group contracts, filing requirement; required and prohibited provisions.

(a) A health maintenance organization may issue a master group contract with the approval of the Commissioner of Insurance provided the contract and the individual certificates issued to members of the group, shall comply in substance to the other provisions of this Article. Any such contract may provide for the adjustment of the rate of the premium or benefits conferred as provided in the contract, and in accordance with an adjustment schedule filed with and approved by the Commissioner of Insurance. If the master group contract is issued, altered or modified, the enrollees' contracts issued in pursuance thereof are altered or modified accordingly, all laws and clauses in the enrollees' contracts to the contrary notwithstanding. Nothing in this Article shall be construed to prohibit or prevent the same. Forms of such contract shall at all times be furnished upon request of enrollees thereto.

~~(b) For employer groups of 50 or more persons no evidence of individual insurability may be required at the time the person first becomes eligible for insurance or within 31 days thereafter except for any insurance supplemental to the basic coverage for which evidence of individual insurability may be required. With respect to trustee groups the phrase "groups of 50" must be applied on a participating unit basis for the purpose of requiring individual evidence of insurability.~~

~~(c) Employer master group contracts may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as "those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage." Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any previous plan. Credit must be given for that portion of the waiting period which was met under the previous plan. As used in this subsection, a "previous plan" includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care. In determining whether a preexisting condition provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage.~~

(d) Employees shall be added to the master group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term 'employee' is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis.

(e) Whenever an employer master group contract replaces another group contract, whether the contract was issued by a corporation under Articles 1 through 67 of this Chapter, the liability of the succeeding corporation for insuring persons covered under the previous group contract is:

- (1) Each person who is eligible for coverage in accordance with the succeeding corporation's plan of benefits with respect to classes eligible and activity at work and nonconfinement rules must be covered by the succeeding corporation's plan of benefits; and
- (2) Each person not covered under the succeeding corporation's plan of benefits in accordance with (e)(1) must nevertheless be covered by the succeeding corporation if that person was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the person is a member of the class of persons eligible for coverage under the succeeding corporation's plan."

Section 19. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-169. Required coverage for minimum hospital stay following birth.

(a) Definitions. -- As used in this section:

(1) 'Attending providers' includes:

- a. The obstetrician-gynecologists, pediatricians, family physicians, and other physicians primarily responsible for the care of a mother and newborn; and
- b. The nurse midwives and nurse practitioners primarily responsible for the care of a mother and her newborn child in accordance with State licensure and certification laws.

(2) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any of the following kinds of insurance:

- a. Accident,
- b. Credit,
- c. Disability income,
- d. Long-term or nursing home care,
- e. Medicare supplement,
- f. Specified disease,
- g. Dental or vision,
- h. Coverage issued as a supplement to liability insurance,
- i. Workers' compensation,
- j. Medical payments under automobile or homeowners, and
- k. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

1. Hospital income or indemnity.

- (3) 'Insurer' means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(b) In General. -- Except as provided in subsection (c) of this section, an insurer that provides a health benefit plan that contains maternity benefits, including benefits for childbirth, shall ensure that coverage is provided with respect to a mother who is a participant, beneficiary, or policyholder under the plan and her newborn child for a minimum of 48 hours of inpatient length of stay following a normal vaginal delivery, and a minimum of 96 hours of inpatient length of stay following a cesarean section, without requiring the attending provider to obtain authorization from the insurer or its representative.

(c) Exception. -- Notwithstanding subsection (b) of this section, an insurer is not required to provide coverage for postdelivery inpatient length of stay for a mother who is a participant, beneficiary, or policyholder under the insurer's health benefit plan and her newborn child for the period referred to in subsection (b) of this section if:

- (1) A decision to discharge the mother and her newborn child before the expiration of the period is made by the attending provider in consultation with the mother; and
- (2) The health benefit plan provides coverage for postdelivery follow-up care as described in subsections(d) and (e) of this section.

(d) Postdelivery Follow-Up Care. -- In the case of a decision to discharge a mother and her newborn child from the inpatient setting before the expiration of 48 hours following a normal vaginal delivery or 96 hours following a cesarean section, the health benefit plan shall provide coverage for timely postdelivery care. This health care shall be provided to a mother and her newborn child by a registered nurse, physician, nurse practitioner, nurse midwife, or physician assistant experienced in maternal and child health in:

- (1) The home, a provider's office, a hospital, a birthing center, an intermediate care facility, a federally qualified health center, a federally qualified rural health clinic, or a State health department maternity clinic; or
- (2) Another setting determined appropriate under federal regulations promulgated under Title VI of Public Law 104-204.

The attending provider in consultation with the mother shall decide the most appropriate location for follow-up care.

(e) Timely Care. -- As used in subsection (d) of this section, 'timely postdelivery care' means health care that is provided:

- (1) Following the discharge of a mother and her newborn child from the inpatient setting; and
- (2) In a manner that meets the health care needs of the mother and her newborn child, that provides for the appropriate monitoring of the conditions of the mother and child, and that occurs not later than the 72-hour period immediately following discharge.

(f) Prohibitions. -- An insurer shall not:

- (1) Deny enrollment, renewal, or continued coverage with respect to its health benefit plan to a mother and her newborn child who are participants, beneficiaries, or policyholders, based on compliance with this section;
- (2) Provide monetary payments or rebates to mothers to encourage the mothers to request less than the minimum coverage required under this section;
- (3) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided treatment to an individual policyholder, participant, or beneficiary in accordance with this section; or
- (4) Provide monetary or other incentives to an attending provider to induce the provider to provide treatment to an individual policyholder, participant, or beneficiary in a manner inconsistent with this section.

(g) Effect on Mother. -- Nothing in this section requires that a mother who is a participant, beneficiary, or policyholder covered under this section:

- (1) Give birth in a hospital; or
- (2) Stay in the hospital for a fixed period of time following the birth of her child.

(h) Level and Type of Reimbursements. -- Nothing in this section prevents an insurer from negotiating the level and type of reimbursement with an attending provider for care provided in accordance with this section."**Section 20.** G.S. 58-3-170 reads as rewritten:

"§ 58-3-170. *Requirements for maternity coverage.*

(a) Every entity providing a health benefit plan that provides maternity coverage in this State shall provide benefits for the necessary care and treatment related to maternity that are no less favorable than benefits for physical illness generally.

~~(a1) A health benefit plan that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly-born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by caesarean section.~~

(b) As used in this section, 'health benefit plans' means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA."

Section 21. G.S. 58-51-55 reads as rewritten:

"§ 58-51-55. *No discrimination against the mentally ill and chemically dependent.*

(a) Definitions. -- As used in this section, the term:

- (1) 'Mental illness' has the same meaning as defined in G.S. 122C-3(21); and
- (2) 'Chemical dependency' has the same meaning as defined in G.S. 58-51-50

with a diagnosis found in the Diagnostic and Statistical Manual of Mental Disorders DSM-3-R or the International Classification of Diseases ICD/9/CM, or a later edition of those manuals.

(b) Coverage of Physical Illness. -- No insurance company licensed in this State under the provisions of Articles 1 through 64 of this Chapter shall, solely because an individual to be insured has or had a mental illness or chemical dependency:

- (1) Refuse to issue or deliver to that individual any policy that affords benefits or coverages for any medical treatment or service for physical illness or injury;
- (2) Have a higher premium rate or charge for physical illness or injury coverages or benefits for that individual; or
- (3) Reduce physical illness or injury coverages or benefits for that individual.

(b1) Coverage of Mental Illness. -- A policy that covers both physical illness or injury and mental illness may not impose a lesser lifetime or annual dollar limitation on the mental health benefits than on the physical illness or injury benefits, subject to the following:

- (1) A lifetime limit or annual limit may be made applicable to all benefits under the policy, without distinguishing the mental health benefits.
- (2) If the policy contains lifetime limits only on selected physical illness and injury benefits, and these benefits do not represent substantially all of the physical illness and injury benefits under the policy, the insurer may impose a lifetime limit on the mental health benefits that is based on a weighted average of the respective lifetime limits on the selected physical illness and injury benefits. The weighted average shall be calculated in accordance with rules adopted by the Commissioner.
- (3) If the policy contains annual limits only on selected physical illness and injury benefits, and these benefits do not represent substantially all of the physical illness and injury benefits under the policy, the insurer may impose an annual limit on the mental health benefits that is based on a weighted average of the respective annual limits on the selected physical illness and injury benefits. The weighted average shall be calculated in accordance with rules adopted by the Commissioner.
- (4) Except as otherwise provided in this section, the policy may distinguish between mental illness benefits and physical injury or illness benefits with respect to other terms of the policy, including coinsurance, limits on provider visits or days of coverage, and requirements relating to medical necessity.
- (5) If the insurer offers two or more benefit package options under a policy, each package must comply with this subsection.
- (6) This subsection does not apply to a policy if the insurer can demonstrate to the Commissioner that compliance will increase the cost of the policy by one percent (1%) or more.
- (7) This subsection expires October 1, 2001, but the expiration does not affect services rendered before that date.

(c) Mental Illness or Chemical Dependency Coverage Not Required. -- ~~Nothing in this section prevents any insurance company from excluding from coverage any physical illness or injury or mental illness or chemical dependency which has existed previous to coverage of the individual by the insurance company or from refusing to issue or deliver to that individual any policy because of the underwriting of any physical condition whether or not related to~~ requires an insurer to offer coverage for mental illness or chemical dependency, except as provided in G.S. 58-51-50.

(d) Applicability. -- ~~This Subsection (b1) of this section applies only to group health insurance contracts covering more than 50 employees. The remainder of this section applies only to group health insurance contracts covering 20 or more employees. For purposes of this section, 'group health insurance contracts' include MEWAs, as defined in G.S. 58-49-30(a)."~~

Section 22. G.S. 58-65-90 reads as rewritten:

"§ 58-65-90. *No discrimination against the mentally ill and chemically dependent.*

(a) Definitions. -- As used in this section, the term:

- (1) 'Mental illness' has the same meaning as defined in G.S. 122C-3(21); and
- (2) 'Chemical dependency' has the same meaning as defined in G.S. 58-65-75

with a diagnosis found in the Diagnostic and Statistical Manual of Mental Disorders DSM-3-R or the International Classification of Diseases ICD/9/CM, or a later edition of those manuals.

(b) Coverage of Physical Illness. -- ~~No hospital, medical, dental or health service corporation governed by this Chapter shall, solely because an individual to be insured has or had a mental illness or chemical dependency:~~

- (1) ~~Refuse to issue or deliver to that individual any individual or group hospital, dental, medical or health service subscriber contract in this State that affords benefits or coverage for medical treatment or service for physical illness or injury;~~
- (2) ~~Have a higher premium rate or charge for physical illness or injury coverages or benefits for that individual; or~~
- (3) ~~Reduce physical illness or injury coverages or benefits for that individual.~~

(b1) Coverage of Mental Illness. -- A subscriber contract that covers both physical illness or injury and mental illness may not impose a lesser lifetime or annual dollar limitation on the mental health benefits than on the physical illness or injury benefits, subject to the following:

- (1) A lifetime limit or annual limit may be made applicable to all benefits under the subscriber contract, without distinguishing the mental health benefits.
- (2) If the subscriber contract contains lifetime limits only on selected physical illness or injury benefits, and these benefits do not represent substantially all of the physical illness and injury benefits under the subscriber contract, the service corporation may impose a lifetime limit on the mental health benefits that is based on a weighted average of the respective lifetime limits on the selected

physical illness and injury benefits. The weighted average shall be calculated in accordance with rules adopted by the Commissioner.

- (3) If the subscriber contract contains annual limits only on selected physical illness and injury benefits, and these benefits do not represent substantially all of the physical illness and injury benefits under the subscriber contract, the service corporation may impose an annual limit on the mental health benefits that is based on a weighted average of the respective annual limits on the selected physical illness and injury benefits. The weighted average shall be calculated in accordance with rules adopted by the Commissioner.
- (4) Except as otherwise provided in this section, the subscriber contract may distinguish between mental illness benefits and physical injury or illness benefits with respect to other terms of the subscriber contract, including coinsurance, limits on provider visits or days of coverage, and requirements relating to medical necessity.
- (5) If the service corporation offers two or more benefit package options under a subscriber contract, each package must comply with this subsection.
- (6) This subsection does not apply to a subscriber contract if the service corporation can demonstrate to the Commissioner that compliance will increase the cost of the subscriber contract by one percent (1%) or more.
- (7) This subsection expires October 1, 2001, but the expiration does not affect services rendered before that date.

(c) Mental Illness or Chemical Dependency Coverage Not Required. -- Nothing in this section prevents any hospital or medical plan from excluding from coverage any physical illness or injury or mental illness or chemical dependency which has existed previous to coverage of the individual by the hospital or medical plan or from refusing to issue or deliver to that individual any policy because of the underwriting of any physical condition whether or not related to requires a service corporation to offer coverage for mental illness or chemical dependency. dependency, except as provided in G.S. 58-65-75.

(d) Applicability. -- This Subsection (b1) of this section applies only to subscriber contracts covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."

Section 23. G.S. 58-67-75 reads as rewritten:

"§ 58-67-75. *No discrimination against the mentally ill and chemically dependent.*

(a) **Definitions.** -- As used in this section, the term:

- (1) 'Mental illness' has the same meaning as defined in G.S. 122C-3(21); and
- (2) 'Chemical dependency' has the same meaning as defined in G.S. 58-67-70

with a diagnosis found in the Diagnostic and Statistical Manual of Mental Disorders DSM-3-R or the International Classification of Diseases ICD/9/CM, or a later edition of those manuals.

(b) Coverage of Physical Illness. -- No health maintenance organization governed by this Chapter shall, solely because an individual has or had a mental illness or chemical dependency:

- (1) Refuse to enroll that individual in any health care plan covering physical illness or injury;
- (2) Have a higher premium rate or charge for physical illness or injury coverages or benefits for that individual; or
- (3) Reduce physical illness or injury coverages or benefits for that individual.

(b1) Coverage of Mental Illness. -- A health care plan that covers both physical illness or injury and mental illness may not impose a lesser lifetime or annual dollar limitation on the mental health benefits than on the physical illness or injury benefits, subject to the following:

- (1) A lifetime limit or annual limit may be made applicable to all benefits under the plan, without distinguishing the mental health benefits.
- (2) If the plan contains lifetime limits only on selected physical illness and injury benefits, and these benefits do not represent substantially all of the physical illness and injury benefits under the plan, the HMO may impose a lifetime limit on the mental health benefits that is based on a weighted average of the respective lifetime limits on the selected physical illness and injury benefits. The weighted average shall be calculated in accordance with rules adopted by the Commissioner.
- (3) If the plan contains annual limits only on selected physical illness and injury benefits, and these benefits do not represent substantially all of the physical illness and injury benefits under the plan, the HMO may impose an annual limit on the mental health benefits that is based on a weighted average of the respective annual limits on the selected physical illness and injury benefits. The weighted average shall be calculated in accordance with rules adopted by the Commissioner.
- (4) Except as otherwise provided in this section, the plan may distinguish between mental illness benefits and physical injury or illness benefits with respect to other terms of the plan, including coinsurance, limits on provider visits or days of coverage, and requirements relating to medical necessity.
- (5) If the HMO offers two or more benefit package options under a plan, each package must comply with this subsection.
- (6) This subsection does not apply to a health benefit plan if the HMO can demonstrate to the Commissioner that compliance will increase the cost of the plan by one percent (1%) or more.
- (7) This subsection expires October 1, 2001, but the expiration does not affect services rendered before that date.

(c) Mental Illness or Chemical Dependency Coverage Not Required. -- Nothing in this section prevents any health maintenance organization from excluding from coverage any physical illness or injury or mental illness or chemical dependency which has existed previous to coverage of the individual by the health maintenance organization or from refusing to issue

~~or deliver to that individual any policy because of the underwriting of any physical condition whether or not related to requires an HMO to offer coverage for mental illness or chemical dependency. dependency, except as provided in G.S. 58-67-70.~~

(d) Applicability. -- ~~This Subsection (b1) of this section applies only to group contracts covering more than 50 employees. The remainder of this section applies only to group contracts covering 20 or more employees."~~

Section 24. G. S. 58-3-173 is repealed.

Section 25. Sections 1 through 18 of this act apply to all affected contracts that are delivered, issued for delivery, or renewed on and after July 1, 1997. Sections 19, 20, 21, 22, and 23 of this act apply to all affected contracts that are delivered, issued for delivery, or renewed on and after January 1, 1998. For the purposes of this act, renewal of a contract is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the contract.

Section 26. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law upon approval of the Governor at 12:02 p.m. on the 1st day of July, 1997.

S.B. 924

CHAPTER 260

AN ACT TO AUTHORIZE CRIMINAL RECORD CHECKS OF EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 114 of the General Statutes is amended by adding the following new section to read:

"§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Human Resources.

(a) Definitions. -- As used in this section, the term:

- (1) 'Criminal history' means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Human Resources. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B,

Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(2) 'Covered person' means:

- a. An applicant for employment or a current employee in a position in the Department of Human Resources who provides direct care for a client, patient, student, resident or ward of the Department; or
- b. Supervises positions providing direct care as outlined in subdivision a. of this subdivision.

(b) When requested by the Department of Human Resources, the North Carolina Department of Justice may provide to the Department of Human Resources a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the Department of Human Resources shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of Human Resources shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Human Resources shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Human Resources shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by

the North Carolina Division of Criminal Information. All of the information the Department of Human Resources receives through the checking of the criminal history is privileged information and for the exclusive use of the Department of Human Resources.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Human Resources. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Human Resources in determining whether employment shall be denied:

- (1) The level and seriousness of the crime;
- (2) The date of the crime;
- (3) The age of the person at the time of the conviction;
- (4) The circumstances surrounding the commission of the crime, if known;
- (5) The nexus between the criminal conduct of the person and job duties of the person;
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Human Resources may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Human Resources may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 2. The Department of Human Resources shall use funds available to cover the costs of implementing Section 1 of this act.

Section 3. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 26th day of June, 1997.

Became law upon approval of the Governor at 12:04 p.m. on the 1st day of July, 1997.

H.B. 210

CHAPTER 261

AN ACT TO CHANGE THE NAME OF THE NORTH CAROLINA DEPARTMENT OF AGRICULTURE TO THE NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 19A-22 reads as rewritten:

"§ 19A-22. *Animal Welfare Section in Animal Health Division of Department of Agriculture created; Director.*

There is hereby created within the Animal Health Division of the North Carolina Department of ~~Agriculture~~, Agriculture and Consumer Services, a new section thereof, to be known as the Animal Welfare Section of said division.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said section whose duties and authority shall be determined by the Commissioner subject to the approval of the Board of Agriculture and subject to the provisions of this Article.

Section 2. G.S. 19A-23(8) reads as rewritten:

"(8) 'Director' means the Director of the Animal Welfare Section of the Animal Health Division of the Department of ~~Agriculture~~, Agriculture and Consumer Services."

Section 3. G.S. 62-102(b)(6) reads as rewritten:

"(6) The Department of ~~Agriculture~~, Agriculture and Consumer Services;"

Section 4. G.S. 66-58(b)(2) reads as rewritten:

"(2) The Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products."

Section 5. G.S. 66-58(b)(13b) reads as rewritten:

"(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department."

Section 6. G.S. 66-58(c)(7) and (8) read as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Human Resources or by the ~~State Department of Agriculture~~, Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting such inmates or clients, and other bona fide visitors.

(8) The sale by the Department of Agriculture and Consumer Services of livestock, poultry and publications in keeping with its present livestock and farm program."

Section 7. G.S. 81A-9(2) reads as rewritten:

"(2) Authorized Agent. -- An 'authorized agent' is any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any provisions of this Chapter and who is designated by an official identification card issued by the Commissioner."

Section 8. G.S. 81A-29 reads as rewritten:

"§ 81A-29. *Offenses and penalties.*

Any person who violates any provision of this section or any provision of this Chapter or regulations promulgated pursuant thereto for which a specific penalty has not been prescribed shall be guilty of a Class 2 misdemeanor upon a first conviction. Upon a subsequent conviction thereof, said person shall be guilty of a Class 1 misdemeanor. No person shall:

- (1) Use or have in possession for use in commerce any incorrect weight or measure.
- (2) Remove any tag, seal, or mark from any weight or measure without specific written authorization from the Commissioner or his authorized agent.
- (3) Hinder or obstruct any weights-and-measures official in the performance of his duties.
- (4) Impersonate in any way any employee of the North Carolina Department of Agriculture and Consumer Services designated by the Commissioner to enforce any part of this Chapter.
- (5) Use in retail trade, except in the preparation of packages put up in advance of sale, a weighing or measuring device which is not so positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer.
- (6) Manufacture, use or possess a counterfeit seal, tag, mark, certificate, label or decal representing, imitating or copying the same issued by the Commissioner under this Chapter."

Section 9. G.S. 81A-51(3) reads as rewritten:

"(3) 'Department' means the North Carolina Department of ~~Agriculture~~ Agriculture and Consumer Services."

Section 10. G.S. 81A-71 reads as rewritten:

"§ 81A-71. *Prerequisites for scale technician*. It shall be unlawful for any scale technician to render service as a scale technician until after he or she has complied with the following requirements:

- (1) Obtained from the Department of Agriculture and Consumer Services a copy of this Article, a copy of regulations pertinent to said Article, and an application form for registration.
- (2) to (4) Repealed by Session Laws 1983, c. 111, s. 2, effective July 1, 1983.
- (5) Obtained a registration card or certificate from the Commissioner or his authorized agent and a model form of service certificate.
- (6) Obtained from the Department an annual certification of the standards of weight which will be used by the scale technician.

The provisions of this Article shall not apply to a full-time employee who renders service only on a scale or weighing device, or on scales or weighing devices, owned solely by his or her employer unless additional pay or compensation is received for such service."

Section 11. G.S. 90-187.10(10) reads as rewritten:

"(10) Any person employed by the North Carolina Department of Agriculture and Consumer Services as a livestock inspector or by the U.S. Department of Agriculture as an animal health technician from performing regular duties assigned to him or her during the course and scope of that person's employment."

Section 12. G.S. 105-130.37(b)(2) reads as rewritten:

"(2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of ~~Agriculture~~ Agriculture and Consumer Services, or the average price of the crop in the

nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop; and".

Section 13. G.S. 105-151.14(b)(2) reads as rewritten:

"(2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of Agriculture, Agriculture and Consumer Services, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop; and".

Section 14. G.S. 105-259(b)(14) reads as rewritten:

"(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture and Consumer Services when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes."

Section 15. The Title to Article 1 of Chapter 106 reads as rewritten:
"ARTICLE 1.

Department of Agriculture, Agriculture and Consumer Services."

Section 16. G.S. 106-2 reads as rewritten:

"§ 106-2. Department of Agriculture and Consumer Services established; Board of Agriculture, membership, terms of office, etc.

The Department of Agriculture and Consumer Services is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of 10 other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so

that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession."

Section 21. G.S. 106-21.1 reads as rewritten:

"§ 106-21.1. *Feed Advisory Service; fee.*

The Department of Agriculture and Consumer Services shall operate a Feed Advisory Service for the analysis of animal feeds in order to provide a feeding management service to all animal producers in North Carolina. A fee of ten dollars (\$10.00) shall accompany each feed sample sent to the Department for testing. A fee of seventy-five dollars (\$75.00) shall accompany each feed sample which is to be tested for the presence of fumonisin."

Section 22. G.S. 106-21.2 reads as rewritten:

"§ 106-21.2. *Food Bank information and referral service.*

The Department of Agriculture and Consumer Services may maintain an information and referral service for persons and organizations that have notified the department of their desire to donate food to a nonprofit organization or a nonprofit corporation."

Section 23. G.S. 106-22.1 reads as rewritten:

"§ 106-22.1. *State farms.* State-owned farmland, including timberland, allocated to the Department of Agriculture and Consumer Services for the State Farm Program, shall be managed by the Department for research, teaching, and demonstration in agriculture, forestry, and aquaculture. Research projects on the State farms shall be approved by the Department. The Department may sell surplus commodities produced on the farms."

Section 24. G.S. 106-22.2 reads as rewritten:

"§ 106-22.2. *Museum of Natural Sciences; Maritime Museum; disposition of objects.*

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Agriculture and Consumer Services may sell or exchange any object from the collections of the Museum of Natural Sciences and the Maritime Museum when it would be in the best interests of the Museums to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museums' collections or exhibits."

Section 25. G.S. 106-24 reads as rewritten:

"§ 106-24. *Collection and publication of information relating to agriculture; cooperation.*

The Department of Agriculture and Consumer Services shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several

boards of county commissioners of the State, to accomplish the purpose of this Part."

Section 26. G.S. 106-24.1 reads as rewritten:

"§ 106-24.1. *Confidentiality of information collected and published.*

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs."

Section 27. G.S. 106-65.23 reads as rewritten:

"§ 106-65.23. *Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.*

There is hereby recreated, within the North Carolina Department of Agriculture, Agriculture and Consumer Services, a Division thereof, to be known as the Structural Pest Control Division of said Department. The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice from the entomology faculty of said University to serve on said Committee at the pleasure of the dean. The Secretary of Environment, Health, and Natural Resources shall appoint one member of the Committee who shall be an epidemiologist in the Division of Health Services and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest

control industry, the pesticide industry, the Department of ~~Agriculture, Agriculture and Consumer Services,~~ the Department of Environment, Health, and Natural Resources and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. ~~A member of the Committee appointed by the Governor shall not succeed himself.~~

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Four members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

Section 28. G.S. 106-65.24(8a) reads as rewritten:

"(8a) 'Director' means the Director of the Structural Pest Control Division of the Department of ~~Agriculture, Agriculture and Consumer Services.~~"

Section 29. G.S. 106-65.24(9a) reads as rewritten:

"(9a) 'Enforcement agency' means the Structural Pest Control Division of the Department of ~~Agriculture, Agriculture and Consumer Services.~~"

Section 30. G.S. 106-65.44(4) reads as rewritten:

"(4) The term 'Division of Entomology' means the Division of the Department of Agriculture ~~so named,~~ and Consumer Services."

Section 31. G.S. 106-65.69(3) reads as rewritten:

- "(3) Commissioner. -- The Commissioner of ~~the Department of~~ Agriculture of this State or any officer or employee of ~~said the~~ Department of Agriculture and Consumer Services or designated cooperator to whom authority to act in his stead has been or hereafter may be delegated."

Section 32. G.S. 106-121(2) reads as rewritten:

- "(2) The term 'Commissioner' means the Commissioner of Agriculture; the term 'Department' means the Department of ~~Agriculture~~, Agriculture and Consumer Services, and the term 'Board' means the Board of Agriculture."

Section 33. G.S. 106-134(8) reads as rewritten:

- "(8) If it has been found by the Department of Agriculture and Consumer Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements."

Section 34. G.S. 106-141.1 reads as rewritten:

"§ 106-141.1. *Inspections of donated food.* (a) The Department of Agriculture and Consumer Services is authorized to inspect for compliance with the provisions of Article 12 of Chapter 106 of the North Carolina General Statutes, food items donated for use or distribution by nonprofit organizations or nonprofit corporations, and may establish procedures for the handling of the food items, including reporting procedures concerning the donation of food.

(b) The Department of Agriculture and Consumer Services may apply to Superior Court for injunctive relief restraining the violation of this section.

(c) Nothing in this section shall limit the duties or responsibilities of the Commission for Health Services or the local boards of health."

Section 35. G.S. 106-145.2(5) reads as rewritten:

- "(5) Department. -- The Department of ~~Agriculture~~, Agriculture and Consumer Services."

Section 36. G.S. 106-185(a) reads as rewritten:

"(a) Scope. -- This Article gives the Department of Agriculture and Consumer Services the authority to investigate marketing conditions for and establish and maintain standard grades, packages, and State brands for farm products. As used in this Article, the term 'farm products' means farm crops, horticultural crops, and animal products."

Section 37. G.S. 106-202.14(a) reads as rewritten:

"(a) The North Carolina Plant Conservation Board is created within the Department of ~~Agriculture~~, Agriculture and Consumer Services."

Section 38. G.S. 106-202.14(b)(6) reads as rewritten:

- "(6) The Department of ~~Agriculture~~, Agriculture and Consumer Services."

Section 39. G.S. 106-202.15(12) reads as rewritten:

"(12) To promulgate regulations under which the Department of Agriculture and Consumer Services may issue permits to licensed nurserymen, commercial growers, scientific supply houses and botanical gardens for the sale or distribution of plants on the protected list provided that the plants are nursery propagated and grown horticulturally from seeds or by vegetative propagation of cuttings, meristems or other similar materials and that the plants bear the grower's permit number."

Section 40. G.S. 106-202.19(a)(7) reads as rewritten:

"(7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those provided for the current year or harvest season by the Department of Agriculture; Agriculture and Consumer Services;"

Section 41. G.S. 106-202.19(b) reads as rewritten:

"(b) The Commissioner or any employee of the Department of Agriculture and Consumer Services designated by the Commissioner to enforce the provisions of this Article, may enter any place within the State at all reasonable times where plant materials are being grown, transported or offered for sale and require the presentation for inspection of all pertinent papers and records relative to the provisions of this Article, after giving notice in writing to the owner or custodian of the premises to be entered. If he refuses to consent to the entry, the Commissioner may apply to any district court judge and the judge may order, without notice, that the owner or custodian of the place permit the Commissioner to enter the place for the purposes herein stated and failure by any person to obey the order may be punished as for contempt."

Section 42. G.S. 106-245.14(12) reads as rewritten:

"(12) 'Lots' means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture, Agriculture and Consumer Services."

Section 43. G.S. 106-245.31(3) reads as rewritten:

"(3) 'Department' means the North Carolina Department of Agriculture, Agriculture and Consumer Services."

Section 44. G.S. 106-251 reads as rewritten:

"§ 106-251. Department of Agriculture and Consumer Services to enforce law; examinations."

It shall be the duty of the Department of Agriculture and Consumer Services to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this Article shall be guilty of a violation of this Article."

Section 45. G.S. 106-266.6(5) reads as rewritten:

"(5) 'Health authorities' includes the Department of Environment, Health, and Natural Resources, the State North Carolina Department of Agriculture, Agriculture and Consumer Services, the Commissioner of Agriculture, and the local health authorities."

Section 46. G.S. 106-268 reads as rewritten:

"§ 106-268. *Definitions; enforcement of Article.*

The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this Article and section.

The term 'adulteration' means:

- (1) Failure to meet definitions and standards as established by the Board of Agriculture.
- (2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
- (3) If any substance has been substituted wholly or in part thereof.
- (4) If it is adjudged to be unfit for human consumption.

The term 'misbranded' means:

- (1) If its labeling is false or misleading in any particular.
- (2) If it is offered for sale under the name of another dairy product or frozen dessert.
- (3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of Agriculture, Agriculture and Consumer Services, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department of Agriculture, acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this Article or of this section have been violated, or whenever a duly authorized agent of the Department of Agriculture has cause to believe that any milk, cream, butter, cheese, ice cream, frozen

dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a 'stop-sale' order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this Article or section not in compliance with this Article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture, Agriculture and Consumer Services, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this Article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this Article or section. In the event any 'stop-sale' order shall be issued under the provisions of this Article or section, the agents, inspectors or representatives of the Department of Agriculture and Consumer Services shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this Article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal."

Section 47. G.S. 106-277.9(7) reads as rewritten:

- "(7) To use the name of the Department of Agriculture and Consumer Services or the results of tests and inspections made by the Department for advertising purposes."

Section 48. G.S. 106-277.28(3) reads as rewritten:

- "(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due."

Section 49. G.S. 106-307.1 reads as rewritten:

"§ 106-307.1. *Serums, vaccines, etc., for control of animal diseases.*

The North Carolina Department of Agriculture and Consumer Services is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture."

Section 50. G.S. 106-313 reads as rewritten:

"§ 106-313. *Price of serum to be fixed.*

The Department of Agriculture and Consumer Services shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production."

Section 51. G.S. 106-322.3(10) reads as rewritten:

- "(10) Where the owner has failed to submit the reports required by the United States Department of Agriculture and the North

~~Carolina Departments~~ Department of Agriculture and Consumer Services for animals on which indemnity is paid under Article 34."

Section 52. G.S. 106-418.10 reads as rewritten:

"§ 106-418.10. *Prohibited conduct.*

It shall be unlawful for any person to:

- (1) Carry on or conduct the business of a livestock dealer without a current valid license issued by the North Carolina Department of Agriculture and Consumer Services under the provisions of this Article;
- (2) Fail to keep the records required by G.S. 106-418.13."

Section 53. G.S. 106-426 reads as rewritten:

"§ 106-426. *Expert graders to be employed; cooperation with United States Department of Agriculture.*

The North Carolina Department of Agriculture and Consumer Services shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. ~~The North Carolina Department of Agriculture~~ may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this Article."

Section 54. G.S. 106-451.7(7) reads as rewritten:

"(7) 'Warehouseman' means a person licensed by North Carolina Department of Agriculture and Consumer Services to engage in the business of storing cotton for hire."

Section 55. G.S. 106-451.9(2) and (3) read as rewritten:

- "(2) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more divisions within the Department of ~~Agriculture~~, Agriculture and Consumer Services.
- (3) To delegate to any division head and other officer or employee of the Department of ~~Agriculture~~ Agriculture and Consumer Services any of the powers and duties given to the Department by statute or by rules promulgated pursuant to this Article."

Section 56. G.S. 106-542 reads as rewritten:

"§ 106-542. *Hatcheries, chick dealers and others to obtain license to operate.*

(a) It shall be unlawful for any person, firm or corporation to operate a hatchery within this State without first obtaining a hatchery license from the Department of Agriculture and Consumer Services for a fee of twenty-five dollars (\$25.00) per year.

(b) It shall be unlawful for any person, firm or corporation to operate as a hatching egg dealer, chick dealer or jobber within this State without first obtaining a license from the Department of Agriculture and Consumer Services for a fee of ten dollars (\$10.00) per year.

(c) The Department of Agriculture and Consumer Services may deny, suspend, revoke or refuse to renew the license of any person, firm or corporation for violation of this Article or any rule or regulation promulgated thereunder."

Section 57. G.S. 106-549.01 reads as rewritten:

"§ 106-549.01. Civil penalties.

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation."

Section 58. G.S. 106-549.15(3) reads as rewritten:

"(3) 'Authorized representative' means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture, Agriculture and Consumer Services."

Section 59. G.S. 106-549.29 reads as rewritten:

"§ 106-549.29. North Carolina Department of Agriculture and Consumer Services responsible for cooperation.

(a) The North Carolina Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous Article in such a manner as will effectuate the purposes of this and the previous Article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture and Consumer Services is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The North Carolina Department of Agriculture and Consumer Services is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of Section 301 of said act."

Section 60. G.S. 106-549.38 reads as rewritten:

"§ 106-549.38. Rules and regulations of State Department of Agriculture, Agriculture and Consumer Services.

All rules and regulations of the ~~North Carolina~~ Department of Agriculture and Consumer Services not inconsistent with the provisions of this Article shall remain in full force and effect until amended or repealed by the Board."

Section 61. G.S. 106-549.51(12) and (13) read as rewritten:

"(12) 'Inspection service' means the official government service within ~~this State~~ the Department of Agriculture and Consumer Services designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.

(13) 'Inspector' means an employee or official of the State Department of Agriculture and Consumer Services authorized by

the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department of Agriculture and such governmental subdivision."

Section 62. G.S. 106-549.52 reads as rewritten:

"(a) The Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The Department of Agriculture is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act."

Section 63. G.S. 106-549.94 reads as rewritten:

"§ 106-549.94. *Regulation of pen-raised quail by Department of Agriculture and Consumer Services; certain authority of North Carolina Wildlife Resources Commission not affected.*

(a) The ~~North Carolina~~ Department of Agriculture and Consumer Services is given exclusive authority to regulate the production and sale of pen-raised quail for food purposes. The Board of Agriculture shall promulgate rules and regulations for the production and sale of pen-raised quail for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling pen-raised quail for food purposes.

(b) The North Carolina Wildlife Resources Commission shall retain its authority to regulate the possession and transportation of live pen-raised quail."

Section 66. G.S. 106-627 reads as rewritten:

"§ 106-627. *Determination of adulteration.*

For purposes of evidence under this Article, the grain dealer or his agent, upon receipt or pending receipt of suspected adulterated grain, may, at his discretion, call any law-enforcement officer to verify the sampling technique,

[and] origin of sampled grain and subsequently send or request the law-enforcement officer to send the sample of grain in a sealed package to the Department of Agriculture and Consumer Services for inspection and analysis in order to protect only the chain of evidence.

Upon [a] finding by the Department of ~~Agriculture~~ that said sample is adulterated grain, the Department shall notify the grain dealer of the results and return the sample to the original sender in a sealed package."

Section 67. G.S. 106-635(10) reads as rewritten:

"(10) The term 'Department' means the North Carolina Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 68. G.S. 106-662(b)(6) reads as rewritten:

"(6) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of ~~Agriculture~~, Agriculture and Consumer Services, setting forth the analysis made by the chemist of the Department of ~~Agriculture~~, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence."

Section 69. G.S. 106-662(c)(2) reads as rewritten:

"(2) The sample shall be drawn in the presence of the manufacturer, seller, or representative designated by either party together with two disinterested adult persons; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested adult persons; provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture and Consumer Services in taking samples and shall be drawn, mixed, and divided, as directed in subdivisions (1), (2), (3), and (4) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner."

Section 70. G.S. 106-708(5) reads as rewritten:

"(5) 'Department' means the Department of ~~Agriculture~~, Agriculture and Consumer Services."

Section 71. G.S. 106-758(5) reads as rewritten:

"(5) 'Department' means the North Carolina Department of ~~Agriculture~~, Agriculture and Consumer Services."

Section 72. G.S. 106-760(a) and (b) read as rewritten:

"(a) There is created within the Department of Agriculture and Consumer Services the Aquaculture Advisory Board, to consist of the following persons:

- (1) The Commissioner of Agriculture, or his designee;
- (2) The Secretary of Commerce, or his designee;
- (3) The Secretary of Environment, Health, and Natural Resources, or his designee;
- (4) The President of the North Carolina Biotechnology Center, or his designee;
- (5) The President of the University of North Carolina, or his designee;
- (6) One Senator designated by the President Pro Tempore of the Senate; and
- (7) One Representative designated by the Speaker of the House of Representatives.

(b) The Commissioner of Agriculture or his designee shall serve as Chairman of the Board. A majority of the Board shall constitute a quorum for the transaction of business. Clerical and other assistance shall be provided by the Department of ~~Agriculture~~, Agriculture and Consumer Services. The Commissioner may appoint advisory committees, pursuant to G.S. 143B-10(d), to assist the Board in carrying out its duties."

Section 73. G.S. 106-761(a) reads as rewritten:

"(a) Authority. The North Carolina Department of Agriculture and Consumer Services shall regulate the production and sale of commercially raised freshwater fish and freshwater crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department of ~~Agriculture~~ and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of Agriculture or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any other State agency."

Section 74. G.S. 106-761(d) reads as rewritten:

"(d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of

operation, qualifications of operators, and the conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the ~~North Carolina Department of Agriculture~~ shall be valid for a period of five years."

Section 75. G.S. 106-761(c)(1) reads as rewritten:

"(1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department of ~~Agriculture~~ to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation and conditions under which fish from such ponds may be taken, transported, possessed, bought, and sold."

Section 76. G.S. 106-761(g) reads as rewritten:

"(g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department of ~~Agriculture~~ and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission."

Section 77. G.S. 106-762(a) reads as rewritten:

"(a) The North Carolina Department of Agriculture and Consumer Services shall, with the assistance of the Wildlife Resources Commission, develop and implement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State."

Section 78. G.S. 106-783(3) reads as rewritten:

"(3) 'Department' means the North Carolina Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 79. G.S. 106-792(3) reads as rewritten:

"(3) Department. -- The North Carolina Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 80. G.S. 113-129(16) reads as rewritten:

"(16) Wildlife. -- Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity. Nothing in this definition is intended to abrogate the exclusive authority given the Department of Agriculture and Consumer Services to regulate the production and sale of pen-raised quail for food purposes."

Section 81. G.S. 113-273(h) reads as rewritten:

"(h) Game Bird Propagation License. -- No person may propagate game birds in captivity or possess game birds for propagation without first procuring a license under this subsection. The Wildlife Resources Commission may by rule prescribe the activities to be covered by the propagation license, which species of game birds may be propagated, and the manner of keeping and raising the birds, in accordance with the overall objectives of conservation of wildlife resources. Except as limited by this subsection, propagated game birds may be raised and sold for purposes of propagation, stocking, food, or taking in connection with dog training as authorized in G.S. 113-291.1(d). Migratory game bird operations authorized under this subsection must also comply with any applicable provisions of federal law and rules. The Wildlife Resources Commission may impose requirements as to shipping, marking packages, banding, tagging, or wrapping the propagated birds and other restrictions designed to reduce the change of illicit game birds being disposed of under the cover of licensed operations. The Wildlife Resources Commission may make a reasonable charge for any bands, tags, or wrappers furnished propagators. The game bird propagation license is issued by the Wildlife Resources Commission upon payment of a fee of five dollars (\$5.00). It authorizes a person or individual to propagate and sell game birds designated in the license, in accordance with the rules of the Wildlife Resources Commission, except:

- (1) Wild turkey and ruffed grouse may not be sold for food.
- (2) Production and sale of pen-raised quail for food purposes is under the exclusive control of the Department of Agriculture, Agriculture and Consumer Services. The Wildlife Resources Commission, however, may regulate the possession, propagation, and transportation of live pen-raised quail.

Wild turkey acquired or raised under a game bird propagation license shall be confined in a cage or pen approved by the Wildlife Resources Commission and no such wild turkey shall be released for any purpose or allowed to range free. It is a Class 3 misdemeanor to sell wild turkey or ruffed grouse for food purposes, to sell quail other than lawfully acquired pen-raised quail for food purposes, or to release or allow wild turkey to range free."

Section 82. G.S. 113A-164.4(3) reads as rewritten:

- "(3) Maintain a Natural Heritage Program to provide assistance in the selection and nomination for registration or dedication of natural areas. The Program shall include classification of natural heritage resources, an inventory of their locations, and a data bank for that information. The Program shall cooperate with the Department of Agriculture and Consumer Services in the selection and nomination of areas that contain habitats for endangered and rare plant species, and shall cooperate with the Wildlife Resources Commission in the selection and nomination of areas that contain habitats for endangered and rare animal species. Information from the natural heritage data bank may be made available to public agencies and private persons for

environmental assessment and land management purposes. Use of the inventory data for any purpose inconsistent with the Natural Heritage Program may not be authorized. The Program shall include other functions as may be assigned for registration, dedication, and protection of natural areas and nature preserves."

Section 83. G.S. 119-26.1 reads as rewritten:

"§ 119-26.1. *Oxygen content standards and reformulated gasoline.*

(a) Rules adopted pursuant to G.S. 143-215.107(a)(9) to regulate the oxygen content of gasoline or to require the use of reformulated gasoline shall be implemented by the Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board. Such rules shall be implemented within any area specified by the Environmental Management Commission when the Commission certifies to the Commissioner of Agriculture that implementation:

- (1) Will improve the ambient air quality within the specified county or counties;
- (2) Is necessary to achieve attainment or preclude violations of the National Ambient Air Quality Standards; or
- (3) Is otherwise necessary to meet federal requirements.

(b) The Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board may adopt rules to implement this section. Rules shall be consistent with the implementation schedule and rules adopted by the Environmental Management Commission.

(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

(d) The Commissioner of Agriculture may delegate his powers and duties under this subsection to the Director of the Standards Division of the Department of Agriculture, Agriculture and Consumer Services."

Section 84. G.S. 119-27.1(b) reads as rewritten:

"(b) The North Carolina Department of Agriculture and Consumer Services shall have the responsibility for the enforcement of this section."

Section 85. G.S. 122D-3(6) reads as rewritten:

"(6) 'Department' means the North Carolina Department of Agriculture, Agriculture and Consumer Services."

Section 86. G.S. 130A-250(9) reads as rewritten:

"(9) Markets where meat food products or poultry products are prepared and sold and which are under the continuous inspection by the North Carolina Department of Agriculture and Consumer Services or the United States Department of Agriculture."

Section 87. G.S. 130A-278 reads as rewritten:

"§ 130A-278. Certain authorities of Department of Agriculture and Consumer Services not replaced.

This Part shall not repeal or limit the Department of Agriculture's Agriculture and Consumer Services' authority to carry out labeling requirements, required butterfat testing, aflatoxin testing, pesticide testing, other testing performed by the Department of Agriculture and Consumer Services any other function of the Department of Agriculture and Consumer Services concerning Grade 'A' milk which is not inconsistent with this Article."

Section 88. G.S. 136-18.2 reads as rewritten:

"§ 136-18.2. Seed planted by Department of Transportation to be approved by Department of Agriculture.

The Department of Transportation shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the State Department of Agriculture and Consumer Services as provided for in the rules and regulations of the Department of Agriculture and Consumer Services for such seed."

Section 89. G.S. 143-64.5 reads as rewritten:

"§ 143-64.5. Department of Agriculture and Consumer Services exempted from application of Article.

Notwithstanding any provisions or limitations of Part 2 of this Article, the North Carolina Department of Agriculture and Consumer Services is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and ~~the North Carolina Department of Agriculture~~ is authorized and empowered to adopt rules in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this section, the provisions of Part 2 of this Article shall not apply to the North Carolina Department of Agriculture, Agriculture and Consumer Services."

Section 90. G.S. 143-436(b)(1) reads as rewritten:

"(1) One member each representing the North Carolina Department of Agriculture and Consumer Services and two members representing the North Carolina Department of Environment, Health, and Natural Resources, one of whom shall be the State Health Director or his designee and one of whom shall represent an environmental protection agency. The persons so selected may be either members of a policy board or departmental officials or employees."

Section 91. G.S. 143-438 reads as rewritten:

"§ 143-438. Commissioner of Agriculture to administer and enforce Article.

The Commissioner of Agriculture shall have the following powers and duties under this Article:

- (1) To administer and enforce the provisions of this Article.
- (2) To attend all meetings of the Pesticide Board, but without power to vote (unless he be designated as the ex officio member of the Board from the Department of Agriculture). Agriculture and Consumer Services).

- (3) To keep an accurate and complete record of all Board meetings and hearings, and to have legal custody of all books, papers, documents and other records of the Board.
- (4) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more of the divisions and other units within the Department of ~~Agriculture.~~ Agriculture and Consumer Services."
- (5) To direct the work of the personnel employed by the Board and of the personnel of the Department of Agriculture and Consumer Services who have responsibilities concerning the programs set forth in this Article.
- (6) To delegate to any division head or other officer or employee of the Department of Agriculture and Consumer Services any of the powers and duties given to the Department by statute or by the rules, regulations and procedures established pursuant to this Article.
- (7) To perform such other duties as the Board may from time to time direct."

Section 92. G.S. 143-468 reads as rewritten:

"§ 143-468. *Disposition of fees and charges.*

(a) Except as provided in subsection (b), all fees and charges received by the Board under this Article shall be credited to the Department of Agriculture and Consumer Services for the purpose of administration and enforcement of this Article.

(b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of ~~Agriculture.~~ Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:

- (1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.
- (2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.
- (3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.
- (4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services for its environmental programs, as directed by the Board, including establishing a pesticide container management program to enhance its pesticide disposal program and its water quality initiatives."

Section 93. G.S. 143A-11(8) reads as rewritten:

"(8) Department of ~~Agriculture.~~ Agriculture and Consumer Services."

Section 94. The title to Article 7 of Chapter 143A of the General Statutes reads as rewritten:

"ARTICLE 7.

Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 95. G.S. 143A-56 reads as rewritten:

"§ 143A-56. *Creation.*

There is hereby created a Department of ~~Agriculture~~. Agriculture and Consumer Services. The head of the Department of ~~Agriculture~~ is the Commissioner of Agriculture."

Section 96. G.S. 143A-58 reads as rewritten:

"§ 143A-58. *Commissioner of Agriculture; transfer of powers and duties to Department.*

Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Agriculture are transferred by a Type I transfer to the Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 97. G.S. 143A-59 reads as rewritten:

"§ 143A-59. *Board of Agriculture; transfer.*

The Board of Agriculture, as contained in Article 1 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 98. G.S. 143A-60 reads as rewritten:

"§ 143A-60. *Structural Pest Control Division; transfer.*

The Structural Pest Control Division of the Department of Agriculture, as contained in Article 4C of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 99. G.S. 143A-61 reads as rewritten:

"§ 143A-61. *The North Carolina Agricultural Hall of Fame; transfer.*

The North Carolina Agricultural Hall of Fame, as contained in Article 50B of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 100. G.S. 143A-62 reads as rewritten:

"§ 143A-62. *Gasoline and Oil Inspection Board; transfer.*

The Gasoline and Oil Inspection Board, as contained in Article 3 of Chapter 119 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 101. G.S. 143A-63 reads as rewritten:

"§ 143A-63. *North Carolina Rural Rehabilitation Corporation; transfer.*

The North Carolina Rural Rehabilitation Corporation, and board of directors, as contained in Chapter 137 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture~~. Agriculture and Consumer Services."

Section 102. G.S. 143A-64 reads as rewritten:

"§ 143A-64. *North Carolina Board of Crop Seed Improvement; transfer.*

The North Carolina Board of Crop Seed Improvement, as contained in Article 30 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of ~~Agriculture, Agriculture and Consumer Services.~~"

Section 103. G.S. 143A-65 reads as rewritten:

"§ 143A-65. *North Carolina Public Livestock Market Advisory Board; transfer.*

The North Carolina Public Livestock Market Advisory Board, as contained in Article 35 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a Type I transfer to the Department of ~~Agriculture, Agriculture and Consumer Services.~~"

Section 104. G.S. 143B-417(1)q. reads as rewritten:

"q. Department of Agriculture and Consumer Services."

Section 105. G.S. 143B-434(c)(2) reads as rewritten:

"(2) The Department of ~~Agriculture, Agriculture and Consumer Services.~~"

Section 106. G.S. 148-66 reads as rewritten:

"§ 148-66. *Cities and towns and Department of Agriculture and Consumer Services may contract for prison labor.*

The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Department of Agriculture and Consumer Services ~~of the State of North Carolina~~ is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations."

Section 107. G.S. 148-67 reads as rewritten:

"§ 148-67. *Hiring to cities and towns and State Department of ~~Agriculture, Agriculture and Consumer Services.~~*

The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in G.S. 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Department of Agriculture and Consumer Services ~~of the State of North Carolina~~ for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction."

Section 108. G.S. 166A-26(a)(6) reads as rewritten:

"(6) The Department of ~~Agriculture~~; Agriculture and Consumer Services;"

Section 109. The Revisor of Statutes shall change all references in the General Statutes from the Department of Agriculture to the Department of Agriculture and Consumer Services.

Section 110. This act becomes effective 1 July 1997.

In the General Assembly read three times and ratified this the 26th day of June, 1997.

Became law upon approval of the Governor at 12:06 p.m. on the 1st day of July, 1997.

S.B. 579

CHAPTER 262

AN ACT TO AMEND THE CHARTER OF THE CITY OF LENOIR TO ALLOW SALARY INCREASES FOR THE CITY COUNCIL AND THE MAYOR AND TO ALLOW THE MAYOR TO BE ELECTED FOR A TERM OF FOUR YEARS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Section 2.9 of the Charter of the City of Lenoir, being Chapter 118 of the 1977 Session Laws, the city council may increase the salaries of the mayor and the council members by ordinance adopted no less than 30 days after the 1997 municipal elections are held. The increase may go into effect immediately. Any subsequent changes to the salary of the mayor and members of the council shall be made in accordance with G.S. 160A-64, except that they may become effective only at the organizational meeting following a regular municipal election.

Section 2. Effective with the 1999 municipal election, Section 3.2 of the Charter of the City of Lenoir, being Chapter 118 of the 1977 Session Laws, reads as rewritten:

"Sec. 3.2. Election of the mayor. At the regular municipal election in 1977, 1999, and biennially quadrennially thereafter, there shall be elected a mayor to serve a term of two four years. The mayor shall be elected by all the voters of the city voting at large."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law on the date it was ratified.

S.B. 535

CHAPTER 263

AN ACT REQUIRING THE CONSENT OF CERTAIN COUNTIES BEFORE LAND IN THOSE COUNTIES MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Alamance, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Cabarrus, Caldwell, Camden, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Montgomery, Nash, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, and Wilkes counties only. This section does not apply as to any:

(1) Condemnation; or

(2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 1997.

Became law upon approval of the Governor at 4:08 p.m. on the 2nd day of July, 1997.

S.B. 637

CHAPTER 264

AN ACT TO ALLOW THE DIRECTOR OF TRANSPORTATION OF THE CITY OF CHARLOTTE TO SET CERTAIN SPEED LIMITS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, is amended by adding the following new section to Article 1 of Subchapter A of Article VI:

"Section 6.27. **Speed Limits.** The Director of Transportation may establish speed limits, as required by G.S. 20-141, on streets within the City of Charlotte, on behalf of the local governing body, the Charlotte City Council."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law on the date it was ratified.

H.B. 892

CHAPTER 265

AN ACT SUBJECT TO A REFERENDUM TO GIVE THE VOTERS OF BEAUFORT COUNTY A SIMILAR RIGHT TO PETITION FOR CHANGES TO THE STRUCTURE OF THE BOARD OF COUNTY COMMISSIONERS AND BOARD OF EDUCATION THAT THE GENERAL LAW PROVIDES FOR CITY RESIDENTS AS TO THEIR CITY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. (a) Part 4 of Article 4 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-60.1. Alteration by voter initiative.

(a) The people may initiate a referendum on proposed alterations authorized by this Part. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the county equal to at least fifteen percent (15%) of the whole number of voters who are registered to vote in the county according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall with reference to the pertinent provisions of G.S. 153A-58, contain the precise text of the resolution necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of alterations. Upon receipt of a valid initiative petition, the county board of elections shall call a special election on the question of adopting the alterations proposed therein and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be the date of the next countywide election, whether primary, general, or special, held more than 90 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the resolution is adopted. Alterations adopted under this section shall continue in force for at least two years after the beginning of the term of office of the officers elected under the new manner of election. No initiative petition may be filed (i) within one year and six months following the effective date of a resolution adopting alterations pursuant to this Part, nor (ii) within one year and six months following the date of any election on alterations that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for alterations on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot.

(b) Notwithstanding G.S. 120-30.9E, the Attorney General shall make any submissions under this section.

(c) This section applies to Beaufort County only."

(b) This section becomes effective only if approved by the qualified voters of Beaufort County in a referendum. The referendum shall be conducted by the Beaufort County Board of Elections on November 3, 1998. Notwithstanding G.S. 120-30.9E, this section shall be submitted by the Attorney General. The question on the ballot shall be:

"[] FOR [] AGAINST

Giving the voters of Beaufort County a similar right to petition for changes in the structure of the Board of Commissioners of Beaufort County as city residents have as to their city council."

Section 2. (a) Article 5 of Chapter 115C of the General Statutes is amended by adding the following section to read:

"§ 115C-37.2. Alteration by voter initiative.

(a) The people may initiate a referendum on proposed alterations to the manner of election of the board of education, with the same options available as under G.S. 160A-101(4), (5), (6), and (7) as are authorized for cities. For purposes of this section, references in G.S. 160A-101 to 'council' and 'city' are deemed to refer to 'board of education' and 'school administrative unit', respectively. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the school administrative unit equal to at least fifteen percent (15%) of the whole number of voters who are registered to vote in the school administrative unit according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall, with reference to the pertinent provisions of G.S. 160A-101, contain the precise text of the resolution necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of alterations. Upon receipt of a valid initiative petition, the county board of elections shall call a special election on the question of adopting the alterations proposed therein, and the board of elections shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be the date of the next countywide election, whether primary, general, or special, held more than 90 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the resolution is adopted. Alterations adopted under this section shall continue in force for at least two years after the beginning of the term of office of the officers elected under the new manner of election. No initiative petition may be filed within one year and six months following the date of any election on alterations that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for alterations on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot.

(b) Notwithstanding G.S. 120-30.9G, the Attorney General shall make any submissions under this section.

(c) This section applies to the Beaufort County School Administrative Unit only."

(b) This section becomes effective only if approved by the qualified voters of the Beaufort County School Administrative Unit in a referendum. Notwithstanding G.S. 120-30.9G, the Attorney General shall make any submissions under this section. The referendum shall be conducted by the Beaufort County Board of Elections on November 3, 1998. The question on the ballot shall be:

"[] FOR [] AGAINST

Giving the voters of the Beaufort County School Administrative Unit a similar right to petition for changes in the structure of the Board of Education of Beaufort County as city residents have as to their city council."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law on the date it was ratified.

S.B. 262

CHAPTER 266

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the Town of Huntersville is granted certain contract powers as follows:

- (1) The Town of Huntersville may, by agreement, provide that certain property described in the agreement as the "McGuire Nuclear Station Property" may not be involuntarily annexed by the Town prior to December 31, 2027, under the General Statutes as they now exist or may be subsequently amended. The Town of Huntersville shall not seek to repeal this act upon its approval by the General Assembly. Nothing in this act impairs the right of the General Assembly to annex any such property by special local act.
- (2) Any agreement entered into as provided in subdivision (1) of this section is specifically determined to be consistent with the public policy of the State of North Carolina.
- (3) Any agreement entered into as provided in subdivision (1) of this section is a continuing agreement and is binding on and enforceable against the current and future members of the Board of Commissioners of the Town of Huntersville during the full term of such agreement and any extension thereof.
- (4) The parties to any agreement entered into as provided in subdivision (1) of this section authorized by this section to modify, amend, and extend such agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the agreement.

Section 2. The Town of Huntersville may accept, as consideration for such agreement, "Payments in lieu of taxes".

Section 3. The agreement under Section 1 of this act shall apply to the McGuire Nuclear Station Property described as follows:

EXHIBIT A

Parcel 1: That certain tract of land containing 25.25 acres, more or less, beginning at a point in the easterly boundary of County Road No. 2134 and running thence N 88-52-58 E 653.8 feet to a point; thence S 7-19-56 E 237.1 feet to a point; thence S 77-32-50 E 1130.4 feet to a point; thence S 45-37-01 W 1310.6 feet to a point; thence N 30-20-20 W 1144.1 feet to a point; thence N 84-16-48 W 245.8 feet to a point in the easterly boundary of County Road No. 2134; thence with said Road N 4-25-22 W 372.1 feet to the point of Beginning and being shown as Tax Parcels Nos. 16, 17 and

18 on tax map recorded in Book 13 at page 13 of the Mecklenburg County Registry.

Parcel 2: That certain tract of land containing 1,239.0 acres, more or less and being more particularly described as BEGINNING at a point in the Catawba River, said point being located in the Mecklenburg/Lincoln County line and running thence from said beginning point in a generally easterly direction with the boundary of the Cowans Ford Hydroelectric Project (Lake Norman) a distance of 13,136 feet to a point; thence S 2-50-59 W 176.6 feet to a point; thence S 25-09-08 E 147.8 feet to a point; thence with the boundary of the Cowans Ford Hydroelectric Project (Lake Norman) a distance of 711.4 feet to a point; thence leaving the boundary of the Cowans Ford Hydroelectric Project S 11-37 E 47.9 feet to a point; thence S 4-55 W 85.1 feet to a point; thence S 25-41 W 63.9 feet to a point; thence N 74-37 W 29.5 feet to an iron pipe; thence N 80-24 W 13.1 feet to a stake; thence S 1-11 E-291.7 feet to an iron pin; thence S 5-50 W-151.3 feet to the centerline of road 2182; thence S 5-50 W-120.8 feet to an iron; thence S 11-22 W-241.7 feet to an iron pin; thence S 16-54 W-241.7 feet to an iron pin; thence S 22-26 W-241.7 feet to an iron pin; thence S 27-58 W-128.8 feet to an iron pin; thence N 61-15 E-489.9 feet to an iron pin; thence S 51-07 E-214.9 feet to an iron pipe; thence S 11-42 E-444.5 feet to an iron pin; thence S 12-54 E-40.2 feet to an iron pipe; thence S 12-14 E-173 feet to an iron pin; thence S 12-20 E-152.0 feet to an iron pipe; thence S 82-15 W-444.2 feet to an iron pipe; thence N 7-51 W-224.9 feet to an iron pipe; thence S 82-13 W-150.3 feet to an iron pipe; thence S 8-07 E-225.2 feet to an iron pipe; thence S 82-30 W-252.5 feet to an iron; thence crossing NC Hwy. 73; S 41-36 W-155.1 feet to an iron pipe; thence N 82-26 E-304.6 feet to a concrete monument; thence N 82-14 E-591.0 feet to an iron pipe; thence S 8-47 E-210.6 feet to an iron pipe; thence N 81-52 E-210.5 feet to an iron pin; thence S 12-37 E-527.1 feet to an iron pipe; thence N 67-05 E-99.0 feet to a stake; thence S 74-55 E 1082.5 feet to a stake; thence S 23-15 W-2128.0 feet to an iron pipe; thence S 87-51 W-341.6 feet to a stake; thence S72-56'W-662.7 feet to a stake; thence N13-47'W-363.2 feet to an iron pin; thence S 62-54 W-375.0 feet to an iron pin; thence S 59-08 W-797.9 feet to an iron pipe; thence S 17-17 W-1048.5 feet to an iron pin in an old road bed; thence following the old road bed S-81-46 E-232.6 feet to an iron pin; thence S 88-02 E-614.5 feet to the centerline of Cashion Road; thence with Cashion Road S 41-23 W-42.5 feet to an iron pin; thence S 58-52 W-317.6 feet to an iron pin; thence S 55-13 W-212.0 feet to an iron pin; thence S 52-39 W-136.4 feet to an iron pin; thence S 39-21 W-115.4 feet to an iron pin; thence S 27-28 W-374.7 feet to an iron pin; thence S 33-29 W-191.2 feet to an iron pipe in the centerline of road; thence leaving Cashion Road S 79-04 W-1003.2 feet to a bolt; thence S 52-29'E-499.0 feet to a hickory; thence S 24-27 W-369.0 feet to a hickory; thence N 88-34 W 2484.4 feet to a point; thence S 4-24 E 488.0 feet to a point; thence S 4-24 E 488.0 feet to an iron pipe; thence S31-08 W 33.5 feet to an iron pipe; thence S 31-08 W 33.5 feet to an iron pipe; thence S 26-31-50 E 81.29 feet to a point; thence S 11-18-01 E 140.80 feet to a point; thence S 36-40-59 E 85.20 feet to a point; thence S 54-46-13 E 99.3 feet to a point; thence S 48-26-06 E 165.1 feet to a point; thence S 78-47-39 W 44.3 feet to a point;

thence N 70-23-55 W 64.0 feet to a point; thence N 62-38-07 W 119.2 feet to a point; thence N 46-16-58 W 115.6 feet to a point; thence S 20-53-48 W 64.2 feet to a point; thence S 72-56-18 W 69.8 feet to a point; thence N 17-25-07 W 60.8 feet to a point; thence N 41-16-04 W 90.8 feet to a point; thence S 31-08 W 117.0 feet to a point; thence S 6-57-15 E 121.0 feet to a point; thence S 38-21-58 E 154.8 feet to a point; thence S 31-49-57 E 128.6 feet to a point; thence S 21-44-01 E 150.1 feet to a point; thence S 24-46-05 E 163.0 feet to a point; thence S 20-00-04 E 152.5 feet to a point; thence S 13-33-03 E 115.1 feet to a point; thence S 10-37-00 E 135.7 feet to a point; thence S 3-15-45 W 80.3 feet to a point; thence S 1-48-59 E 87.7 feet to a point; thence S 81-29-08 E 141.3 feet to a point; thence S 86-05-51 E 126.8 feet to a point; thence N 35-45-45 E 77.0 feet to a point; thence N 4-18-05 W 95.6 feet to a point; thence N 28-03-50 W 120.2 feet to a point; thence N 34-32-57 W 142.6 feet to a point; thence N 7-27-12 W 208.3 feet to a point; thence S 74-55-06 E 128.4 feet to a point; thence N 70-39-55 E 214.3 feet to a point; thence S 34-57-12 E 85.2 feet to a point; thence S 14-09-08 W 120.9 feet to a point; thence S 36-38-57 W 142.8 feet to a point; thence S 43-56-01 E 90.8 feet to a point; thence S 09-24-14 E 135.5 feet to a point; thence S 05-20-06 E 81.2 feet to a point; thence S 26-38-06 W 102.7 feet to a point; thence S 6-48-38 E 40.9 feet to a point; thence S 58-54-04 E 211.7 feet to a point; thence S 88-34 13 E 102.0 feet to a point; thence S 38-39-48 E 73.8 feet to a point; thence S 1-21-43 E 85.0 feet to a point; thence S 62-52-04 E 149.1 feet to a point; thence S 4-42-28 E 27.3 feet to a point; thence S 87-41-57 W 2089.2 feet to a point in the Catawba River (Mecklenburg/Lincoln County Line); thence with the Mecklenburg/Lincoln County line 12,055 feet to the point of BEGINNING.

Section 4. No portion of the McGuire Nuclear Station Property shall be subject to involuntary annexation, or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority by Huntersville or any other town or municipality or consolidated government during the term of the agreement referenced in Section 1 of this act.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law on the date it was ratified.

S.B. 390

CHAPTER 267

AN ACT TO ANNEX CERTAIN TERRITORIES TO THE TOWN OF HUNTERSVILLE, MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Effective as of midnight, June 30, 1997, the corporate limits of the Town of Huntersville are extended to include the following area and territory lying in Mecklenburg County, which area and territory shall be deemed annexed to and part of the Town of Huntersville:

AREA 96-A-1.a

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville at its intersection with the eastern right-of-way

boundary line of Interstate Highway Number 77 (I-77), said point being approximately 1,875 feet north of the intersection of said highway right-of-way with the centerline of Sam Furr Road, SR 2145; thence northwesterly approximately 1,338 feet to a point being the intersection of Northcross Drive with the western right-of-way boundary line of I-77; thence southwest along the centerline of Northcross Drive approximately 964 feet to a point being the intersection of said centerline with the eastern extension of the northern property boundary line of parcel 62-9, tax map 05-06; thence westerly along the northern property boundary lines of said parcel and parcel 62-1 approximately 2,584 feet to a point being a corner of said parcel, said point also being the southwestern property boundary corner of parcel 62-2, tax map 05-06; thence southwesterly in a straight line from said point approximately 1,394 feet to a point being the southeast property boundary corner of parcel 61-3, tax map 05-06; thence continuing southwesterly along the southern property boundary line of said parcel and parcels 61-14, 61-16, 61-8, 61-12 and 61-18 approximately 2,831 feet to a point being the intersection of said property boundary lines with the centerline of NC Highway 73; thence southwest along said centerline approximately 6,278 feet to a point being the intersection of said centerline and the centerline of Oliver Hager Road, SR 2142; thence southeast approximately 61 feet to a point being the northwest property boundary corner of parcel 11-6, tax map 09-01; thence easterly along the northern property boundary lines of parcels 11-6 and 11-16 approximately 651 feet to a point being the northeast property boundary corner of parcel 11-16, tax map 09-01; thence south along the eastern property boundary line of parcel 11-16 approximately 157 feet to a point being the intersection of said boundary line and the centerline of a branch of McDowell Creek; thence southeast with the centerline of said branch approximately 5,776 feet to a point being the intersection of the centerline of said branch and the centerline of McDowell Creek, said point also being on the existing municipal boundary line of the Town of Huntersville; thence northeast with said municipal boundary line approximately 11,107 feet to the POINT OF BEGINNING.

Tract 96-A-I.a encompasses 1026.35 Acres more or less.

AREA 96-A-I.b

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville at its intersection with the centerline of McDowell Creek, said point being located northeast approximately 2,720 feet from the centerline intersection of Ervin Cook Road, SR 2137, and Gilead Road, SR 2136; thence southwesterly with the centerline of McDowell Creek approximately 2,975 feet to a point being the intersection of the centerline of McDowell Creek and the centerline of Torrence Creek; thence easterly with the centerline of Torrence Creek approximately 411 feet to a point being the intersection of the centerline of Torrence Creek and the existing municipal boundary line of the Town of Huntersville; thence southeasterly with said municipal boundary line approximately 13,543 feet to the POINT OF BEGINNING.

Tract 96-A-I.b encompasses 224.76 Acres more or less.

AREA 96-A-I.c

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville at its intersection with the northern right-of-way boundary line of McIlwaine Road, SR 2130, said point being located east approximately 610 feet from the centerline intersection of McIlwaine Road, SR 2130, and Crabapple Lane; thence southerly at a right angle from the northern right-of-way boundary line of McIlwaine Road, SR 2130, approximately 23 feet to a point on the centerline of McIlwaine Road, SR 2130; thence westerly along the centerline of McIlwaine Road, SR 2130, approximately 1,590 feet to a point being the centerline intersection of McIlwaine Road, SR 2130, and McIntosh Drive; thence northerly with the centerline of McIntosh Drive approximately 1,600 feet to a point being the intersection of the centerline of McIntosh Drive and the southwestern extension of the northwestern property boundary line of parcel 282-1, tax map 015-28; thence northeasterly along the northwestern property boundary line of parcel 282-1 approximately 629 feet to a point being a corner in the northern property boundary line of parcel 282-1; thence northeasterly in a straight line from said point approximately 479 feet to a point being a corner on the existing municipal boundary line of the Town of Huntersville; thence southerly with said municipal boundary line approximately 2,772 feet to the POINT OF BEGINNING.

Tract 96-A-I.c encompasses 63.27 Acres more or less.

AREA 96-A-I.d

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville at its intersection with the centerline of Hambright Road, SR 2117, said point being located west approximately 1,434 feet from the centerline intersection of Hambright Road, SR 2117, and U. S. Highway 21; thence westerly along the centerline of Hambright Road, SR 2117, approximately 11,367 feet to a point being the centerline intersection of Hambright Road, SR 2117, and McCoy Road, SR 2138; thence northeasterly along the centerline of McCoy Road, SR 2138, approximately 899 feet to a point being the intersection of McCoy Road, SR 2138, and the southeastward extension of the northern right-of-way of McIlwaine Road, SR 2130; thence to the northwest with said right-of-way extension approximately 21 feet to a point being the intersection of the northern right-of-way for McIlwaine Road and the western right-of-way for McCoy Road, SR 2138, said point being a corner on the existing municipal boundary line of the Town of Huntersville; thence eastward with said municipal boundary line approximately 12,949 feet to the POINT OF BEGINNING.

Tract 96-A-I.d encompasses 551.06 Acres more or less.

Section 2. Effective as of midnight, June 30, 1998, the corporate limits of the Town of Huntersville are extended to include the following area and territory lying in Mecklenburg County, North Carolina, which area and territory shall be deemed annexed to and part of the Town of Huntersville:

AREA 96-A-II

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville, said point being the centerline intersection of NC Highway 73 and Oliver Hager Road, SR 2142; thence west along the centerline of NC Highway 73 approximately 10,304 feet to a point being the

intersection of said centerline and the southern extension of the western property boundary line of parcel 11-6, tax map 01-01; thence northward with the western property boundary lines of parcels 11-6, 11-15, 11-16, 11-17, 11-18, 11-10, 11-9, and 11-19 of tax map 01-01 approximately 1,159 feet to a point being the southwestern property boundary corner of parcel 11-19; thence southwesterly with the southern property boundary lines of parcels 11-7 and 11-8 of tax map 01-01 approximately 490 feet to a point being the southwestern property boundary corner of parcel 11-8; thence northward with the western property boundary line of parcel 11-8, crossing the Hagers Ferry Road right-of-way, and with the western property boundary lines for parcels 13-41 and 13-2 of tax map 01-01 approximately 1,613 feet to a point being a property boundary corner for parcel 13-2, said point also being a point being the intersection of said property boundary lines with the shore line of the impounded body of water known as Lake Norman; thence easterly along said shoreline approximately 38,932 feet to a point being the intersection of said shoreline with a northeastern property boundary corner of parcel 24-18, tax map 01-02; thence southeasterly with the northern property boundary lines of parcels 24-18 and 24-11, tax map 01-02, approximately 1,173 feet to a point being the intersection of the southeastern extension of the northern property boundary line of parcel 24-11 and the centerline of NC Highway 73, said point also being on the existing municipal boundary line of the Town of Huntersville; thence westward with said municipal boundary line approximately 92 feet to the POINT OF BEGINNING.

Tract 96-A-II encompasses 415.84 Acres more or less.

Section 3. Effective as of midnight, June 30, 1999, the corporate limits of the Town of Huntersville are extended to include the following area and territory lying in Mecklenburg County, North Carolina, which area and territory shall be deemed annexed to and part of the Town of Huntersville:

AREA 96-A-III

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville, said point being the centerline intersection of NC Highway 73 and Beatties Ford Road, SR 2128; thence southward with the centerline of Beatties Ford Road, SR 2128, approximately 1,659 feet to a point being the centerline intersection of Beatties Ford Road, SR 2128, and Gilead Road, SR 2136; thence southeast with the centerline of Gilead Road, SR 2136, approximately 6,460 feet to a point being the centerline intersection of Gilead Road, SR 2136, and Bud Henderson Road, SR 2131; thence southwesterly with the centerline of Bud Henderson Road, SR 2131, approximately 5,657 feet to a point being the intersection of the centerline of Bud Henderson Road, SR 2131, and the centerline of a branch of Torrence Creek; thence southerly with the centerline of a branch of Torrence Creek approximately 3,343 feet to a point being the intersection of the centerline of a branch of Torrence Creek and the centerline of Torrence Creek; thence southwesterly with the centerline of Torrence Creek approximately 10,040 feet to a point being the intersection of the centerline of Torrence Creek and the centerline of Neck Road, SR 2074; thence easterly along the centerline of said road approximately 8,677 feet to a point being the intersection of said road centerline and the centerline of Beatties Ford Road, SR 2128; thence

southeasterly along said road centerline approximately 13,491 feet to a point being the intersection of said road centerline and the centerline of Overhill Road, SR 2122; thence east along said road centerline approximately 517 feet to a point being the intersection of said road centerline and the centerline of Pembroke Road, SR 2121; thence northeast along said road centerline approximately 336 feet to a point being the intersection of said road centerline and the northwest extension of the western property boundary line of parcel 264-44, map 15-26; thence southeasterly along said property boundary line, said line also being a northern property boundary line of parcel 264-43, tax map 15-26, approximately 230 feet to a point being a property boundary corner of said parcel; thence southeasterly along the northern property boundary lines of said parcel approximately 1,578 feet to a point being an eastern property boundary corner at its intersection with the northern property boundary lines of parcel 264-29, tax map 15-26; thence easterly along the northern property boundary lines of said parcel approximately 1,236 feet to a point being the intersection of said property boundary lines extended to the centerline of Mount Holly - Huntersville Road, SR 2004; thence northeasterly along said road centerline approximately 8,076 feet to a point being the intersection of said road centerline and the centerline of Alexanderana Road, SR 2116; thence east along said road centerline approximately 5,577 feet to a point being the intersection of said road centerline and the western right-of-way boundary line of US Highway 21, said point being on the existing municipal boundary line of the Town of Huntersville; thence northerly along the existing municipal boundary line approximately 45,475 feet to the POINT OF BEGINNING.

Tract 96-A-III encompasses 6582.88 Acres more or less.

Section 4. Effective as of midnight, June 30, 2000, the corporate limits of the Town of Huntersville are extended to include the following area and territory lying in Mecklenburg County, North Carolina, which area and territory shall be deemed annexed to and part of the Town of Huntersville:

AREA 96-A-IV

BEGINNING AT A POINT being on the existing municipal boundary line of the Town of Huntersville, said point being the southwestern boundary corner of parcel 11-6, tax map 01-01, said point also being located west approximately 1400 feet from the centerline intersection of Hagers Ferry Road and NC Highway 73; thence with the eastern property boundary line of parcel 11-6 approximately 20 feet to a point being the southeastern property boundary corner of parcel 11-5, tax map 01-01; thence westerly along the southern property boundary lines of parcels 11-5, 11-4, 11-3, and 11-13 of tax map 01 approximately 438 feet to a point being the southeastern property boundary corner of parcel 11-2, tax map 01-01; thence northerly, westerly, and then southerly with the property boundary lines of parcel 11-2 approximately 600 feet to the southwestern property boundary corner of parcel 11-2; thence westerly with the southern boundary line of parcels 11-13 and 11-1 of tax map 01-01 approximately 387 feet to the southwestern property boundary corner of parcel 11-1; thence southwesterly with the southwestern extension of the western property boundary line of parcel 11-1 approximately 160 feet to a point being a property boundary corner in the

northern property boundary line of parcel 151-2, tax map 13-15; thence easterly with said property line approximately 900 feet to the northwestern property boundary corner of parcel 141-8, tax map 13-14; thence southerly, easterly, and then southerly with the eastern property boundary line of parcel 151-2 approximately 947 feet to a point being the southwestern property boundary corner of parcel 141-7, tax map 13-14, said point also being on the property boundary line of parcel 141-9, tax map 13-14; thence easterly, southeasterly, and then westerly with the eastern and southern property boundary lines of parcel 141-9 approximately 4,309 feet to the southwestern boundary corner of parcel 141-9; thence northerly and then southwesterly with the northern property boundary lines of parcel 151-8, tax map 13-15 approximately 1,535 feet to the northwestern property boundary corner of parcel 151-8; thence southerly with the western property boundary lines of parcels 151-8, 151-3, 151-10, and 151-6 of tax map 13-15 approximately 969 feet to the southwestern property boundary corner of parcel 151-6; thence easterly with the southern property boundary lines of parcels 151-6 and 151-5 of tax map 13-15 approximately 897 feet to a point being the intersection of the eastern extension of the southern property boundary line of parcel 151-5 and the centerline of Cashion Road, SR 2133; thence southwesterly with the centerline of Cashion Road, SR 2133, approximately 780 feet to a point being the intersection of the eastern extension of the northern property boundary line of parcel 151-1, tax map 13-15, and the centerline of Cashion Road, SR 2133; thence westerly with the northern property boundary line of parcel 151-1 approximately 1044 feet to a point being the northwestern property boundary corner of parcel 151-1; thence southeasterly with the southwestern property boundary line of parcel 151-1 approximately 529 feet to a point being the intersection of the southeastern extension of the southwestern property boundary line of parcel 151-1 and the centerline of Cashion Road, SR 2133; thence to the southwest with the centerline of Cashion Road, SR 2133, approximately 298 feet to a point being the intersection of the centerline of Cashion Road, SR 2133, and the eastern extension of the northern property boundary line of parcel 111-4, tax map 13-11; thence westerly with the northern property boundary line of parcel 111-4 approximately 2,484 feet to a point being the northwestern property boundary corner of parcel 111-4; thence southerly with the western property boundary line of parcel 111-4 approximately 5,504 feet to the southwestern property boundary corner of parcel 111-4; thence westerly with the northern property boundary line of parcel 161-2, tax map 13-16 approximately 2,060 feet to a point being the intersection of the westward extension of said property boundary line with the centerline of the Catawba River, said point being on the Mecklenburg County line; thence southerly along said county line, said line also lying within the Catawba River approximately 7,247 feet to a point being the confluence of the Catawba River and an unnamed tributary flowing north-northwest; thence southeasterly along said unnamed tributary approximately 2,460 feet to a point being the intersection of said unnamed tributary and the western property boundary line of parcel 41-6, tax map 13-04; thence southeasterly along the southern property boundary lines of said parcel and parcels 41-3 and 41-2, tax map 13-04 approximately 1,917 feet, to a point being the

intersection of said property boundary lines extended and the centerline of Neck Road, SR 2074; thence southeasterly with the centerline of Neck Road, SR 2074, approximately 4,470 feet to a point being the intersection of the centerline of Torrence Creek and the centerline of Neck Road, SR 2074, said point being on the existing municipal boundary line of the Town of Huntersville; thence northerly along the existing municipal boundary line approximately 33,395 feet to the POINT OF BEGINNING.

Save and except the following tract:

BEGINNING AT A POINT being the northwestern property boundary corner for parcel 131-16, tax map 13-13, said point being south approximately 810 feet from the centerline intersection of NC Highway 73 and Hubbard Road, SR 2134; thence easterly with the northern property boundary line of parcels 131-16, 131-18, and 131-17 of tax map 13-13 approximately 2035' to a point being the northeastern property boundary corner of parcel 131-17; thence southwesterly with the southeastern property boundary lines of parcels 131-17 and 131-18 approximately 1311 feet to a point being the intersection of the southwestern extension of the said property boundary lines and the southeastward extension of the western property boundary line for parcel 131-18; thence northwesterly with the western property boundary lines of parcels 131-18 and 131-16 approximately 1144 feet to a point being a corner on the southern property line of parcel 131-16; thence westerly with the southern property line of parcel 131-16 approximately 300 feet to a point being the southeastern property boundary corner of parcel 131-16; thence northerly with the western property boundary line of parcel 131-16 approximately 379 feet to the POINT OF BEGINNING.

This save and except tract encompasses 25.73 Acres more or less.

Tract 96-A-IV encompasses 3846.35 Acres more or less (without the save and except tract described).

Section 5. From and after the effective date of each such annexation, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Huntersville, and shall be entitled to the same privileges and benefits as other parts of the Town of Huntersville.

The area so annexed shall receive services provided by the Town of Huntersville on substantially the same basis and in the same manner, and according to the same policies as such services are provided by the Town of Huntersville within the rest of the municipality prior to each such annexation. Each such annexation shall have the same effect as if adopted pursuant to Part 3 of Article 4A of Chapter 160A of the General Statutes of North Carolina.

Section 6. The provisions of G.S. 160A-49.1 and G.S. 160A-49.2 shall apply to each annexation made by this act.

Section 7. A map of the area annexed under each such annexation shall be duly recorded in the same manner as set forth in G.S. 160A-51, but without the necessity of filing any ordinance.

Section 8. Nothing herein shall prevent the owner or owners of property within any of the annexation areas from voluntarily seeking annexation to the Town of Huntersville pursuant to the provisions of G.S.

160A-31 or Part 4 of Article 4A of Chapter 160A of the North Carolina General Statutes, and any such voluntary annexation shall not in any manner affect the subsequent annexations of territory as set forth in this act.

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law on the date it was ratified.

H.B. 221

CHAPTER 268

AN ACT TO AUTHORIZE A MAGISTRATE OR OTHER AUTHORIZED JUDICIAL OFFICIAL IN A NONCAPITAL CASE TO CONDUCT AN INITIAL APPEARANCE BY A TWO-WAY AUDIO AND VIDEO PROCEEDING AND TO ALLOW SWORN LAW ENFORCEMENT OFFICERS TO APPEAR BEFORE JUDICIAL OFFICIALS BY A TWO-WAY AUDIO AND VIDEO TO OBTAIN ARREST WARRANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-511 is amended by adding a new subsection to read:

"(a) A proceeding for initial appearance in a noncapital case under this section may be conducted by an audio and video transmission between the magistrate or other authorized judicial official and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding. Prior to the use of audio and video transmission pursuant to this subsection, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts."

Section 2. G.S. 15A-304(d) reads as rewritten:

"(d) Showing of Probable Cause. -- A judicial official may issue a warrant for arrest only when he is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by either or both one or more of the following:

- (1) Affidavit, Affidavit;
- (2) Oral testimony under oath or affirmation before the issuing official, official; or
- (3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial

district or set of districts and approved by the Administrative Office of the Courts.

If the information is insufficient to show probable cause, the warrant may not be issued."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law upon approval of the Governor at 4:20 p.m. on the 3rd day of July, 1997.

H.B. 1099

CHAPTER 269

AN ACT TO AUTHORIZE SCHOOL PRINCIPALS TO ADMIT CERTAIN GIFTED STUDENTS TO KINDERGARTEN REGARDLESS OF THEIR BIRTH DATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-364 is amended by adding a new subsection to read:

"(d) A child who has passed the fourth anniversary of the child's birth on or before April 16 may enter kindergarten if the child is presented for enrollment no later than the end of the first month of the school year and if the principal of the school finds, based on information submitted by the child's parent or guardian, that the child is gifted and that the child has the maturity to justify admission to the school. The State Board of Education shall establish guidelines for the principal to use in making this finding."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 1997.

Became law upon approval of the Governor at 4:22 p.m. on the 3rd day of July, 1997.

H.B. 529

CHAPTER 270

AN ACT TO PROVIDE THAT DEFERRED TAXES DUE ON CERTAIN PROPERTY THAT IS TAXED AT ITS PRESENT-USE VALUE WILL BE PAID BY THE PERSON TO WHOM THE LAND IS TRANSFERRED IF THE PROPERTY IS TRANSFERRED BECAUSE OF CONDEMNATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-6 reads as rewritten:

"§ 40A-6. *Reimbursement of owner for taxes paid on condemned property.*

(a) An owner whose property is totally taken in fee simple by a condemnor exercising the power of eminent domain, under this Chapter or any other statute statute, shall be entitled to reimbursement from the condemnor of the pro rata portion of real property taxes paid by the owner which that are allocable to a period subsequent to vesting of title in the

condemnor, or the effective date of possession of such the real property, whichever is earlier.

(b) An owner who meets the following conditions is entitled to reimbursement from the condemnor for all deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation:

- (1) The owner is a natural person whose property is taken in fee simple by a condemnor exercising the power of eminent domain under this Chapter or any other statute.
- (2) The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

The definitions in G.S. 105-277.2 apply in this subsection."

Section 2. G.S. 136-121.1 reads as rewritten:

"§ 136-121.1. Reimbursement of owner for taxes paid on condemned property.

(a) A property owner whose property is totally taken in fee simple by any condemning agency (as defined in G.S. 133-7(1)) exercising the power of eminent domain, under this Chapter or any other statute or charter provision, shall be entitled to reimbursement from the condemning agency of the pro rata portion of real property taxes paid which that are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of such the real property, whichever is earlier.

(b) An owner who meets the following conditions is entitled to reimbursement from the condemning agency for all deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation:

- (1) The owner is a natural person whose property is taken in fee simple by a condemning agency exercising the power of eminent domain under this Chapter or any other statute.
- (2) The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

A potential condemning agency that seeks to acquire property by gift or purchase shall give the owner written notice of the provisions of this section. The definitions in G.S. 105-277.2 apply in this subsection."

Section 3. G.S. 105-277.4 reads as rewritten:

"§ 105-277.4. Agricultural, horticultural and forestland -- ~~Application for taxation at present-use value.~~ Application; appraisal at use value; appeal; deferred taxes.

(a) Application. -- Property coming within one of the classes defined in G.S. 105-277.3 shall be eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application shall clearly show that the property comes within one of the classes and shall also contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An initial application shall be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless

the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage.

(b) Appraisal at Present-use Value. -- Upon receipt of a properly executed application, the assessor shall appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor shall appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, the assessor shall furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. He shall also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification.

(b1) Appeal. -- Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. Decisions of the county board may be appealed to the Property Tax Commission.

(c) Deferred Taxes. -- Property meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the property for its present use. The difference between the taxes due on the present-use basis and the taxes which would have been payable in the absence of this classification, together with any interest, ~~penalties~~ penalties, or costs that may accrue thereon, shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless and until the property loses its eligibility for the benefit of this classification. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years which have been deferred ~~as provided herein~~, shall immediately be payable, together with interest thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due ~~herein~~ as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land loses its eligibility, a determination shall be made of the amount of deferred taxes applicable to that part and that amount shall become payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection shall be extinguished.

(d) Exceptions. -- Notwithstanding the provisions of subsection (c), ~~if a farm unit loses (c) of this section, if property loses its eligibility for present use value treatment~~ classification solely due to a one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

- (1) There is a change in income caused by enrollment of land in the federal Conservation Reserve Program authorized by Title XII of

~~the Food Security Act of 1985 (Pub. L. 99-198), as amended, no deferred taxes shall be owed and all present use value tax liens shall be extinguished, the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.~~

~~(e) Notwithstanding the provisions of subsection (c) of this section, if real property qualified for present use appraisal~~

(2) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29) or G.S. 105-275(29).

(3) The property is conveyed by gift to the State, a political subdivision of the State, or the United States, no deferred taxes shall be owed, and all present use value tax liens are extinguished. States."

Section 4. G.S. 40A-4 reads as rewritten:

"§ 40A-4. *No prior purchase offer necessary.*

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by gift or purchase, nor shall the power to negotiate for the gift or purchase of property be impaired by initiation of condemnation proceedings. A potential condemnor who seeks to acquire property by gift or purchase shall give the owner written notice of the provisions of G.S. 40A-6."

Section 5. This act is effective when it becomes law and applies to transfers made on or after August 1, 1997.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law upon approval of the Governor at 4:25 p.m. on the 3rd day of July, 1997.

S.B. 958

CHAPTER 271

AN ACT TO ALLOW STUDENTS WHO RESIDE WITH DOMICILIARIES OF A LOCAL SCHOOL ADMINISTRATIVE UNIT TO ATTEND THE PUBLIC SCHOOLS OF THAT UNIT WITHOUT THE PAYMENT OF TUITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-366 is amended by adding the following new subsection to read:

"(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if:

(1) The student resides with an adult, who is a domiciliary of that unit, as a result of:

a. The death, serious illness, or incarceration of a parent or legal guardian,

b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,

c. Abuse or neglect by the parent or legal guardian,

- d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, or
- e. The loss or uninhabitability of the student's home as the result of a natural disaster;
- (2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit; and
- (3) The adult with whom the student resides and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:
 - a. Confirm the qualifications set out in this subsection establishing the student's residency,
 - b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and
 - c. Attest that the adult with whom the student is residing has been given and accepts responsibility for educational decisions for the child, including receiving notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.

For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the adult with whom the student is living shall attest to that fact in the affidavit.

Upon receipt of both affidavits or an affidavit from the adult with whom the student is living that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law upon approval of the Governor at 4:25 p.m. on the 3rd day of July, 1997.

S.B. 508

CHAPTER 272

AN ACT TO PROVIDE THAT A TURKEY GROWER SHALL NOT BE DISQUALIFIED FROM USE VALUE TAXATION FOR A TWO-YEAR PERIOD IF THE GROWER'S LAND IS TAKEN OUT OF PRODUCTION SOLELY BECAUSE OF THE PRESENCE OF TURKEY DISEASE IN THE AREA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.3 is amended by adding a new subsection to read:

"(c) Notwithstanding the provisions of subsection (a) of this section, agricultural land that meets all of the following conditions does not lose its eligibility for present use value treatment solely on the grounds that it is no longer in actual production, it no longer meets the minimum income requirements, or both:

- (1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.
- (2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poultry Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.
- (3) The land is otherwise eligible for present use value treatment."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1997.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law upon approval of the Governor at 4:27 p.m. on the 3rd day of July, 1997.

S.B. 457

CHAPTER 273

AN ACT TO REQUIRE THE COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAM TO PROVIDE INSTRUCTION ON THE PERFORMANCE OF CARDIOPULMONARY RESUSCITATION AND THE HEIMLICH MANEUVER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-81(e)(1) reads as rewritten:

"(e1) School Health Education Program to Be Developed and Administered.

- (1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, 'family life education', 'family health education', 'health education', 'family living', 'health', 'healthful living curriculum', or 'self-esteem':
 - a. Mental and emotional health;
 - b. Drug and alcohol abuse prevention;
 - c. Nutrition;
 - d. Dental health;
 - e. Environmental health;
 - f. Family living;
 - g. Consumer health;
 - h. Disease control;
 - i. Growth and development;
 - j. First aid and emergency care; care, including the teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association, or American Red Cross.
 - k. Preventing sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS) virus infection, and other communicable diseases;
 - l. Abstinence until marriage education; and
 - m. Bicycle safety."

Section 2. G.S. 115C-81(c) reads as rewritten:

"(c) (For effective date see notes) Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the standard course of study, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise ~~system, system, and the dangers of harmful or illegal drugs, including alcohol, and cardio-pulmonary resuscitation (CPR) and the Heimlich maneuver, alcohol.~~

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 1997.

Became law upon approval of the Governor at 4:28 p.m. on the 3rd day of July, 1997.

AN ACT TO EXEMPT A SWORN LAW ENFORCEMENT OFFICER OR A RETIRED SWORN LAW ENFORCEMENT OFFICER FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR A PERMIT WITHIN TWO YEARS OF RETIREMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-415.12A. Firearms safety and training course exemption for qualified sworn law enforcement officers.

A person who is a qualified sworn law enforcement officer or a qualified former sworn law enforcement officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course."

Section 2. G.S. 14-415.10 is amended by adding the following subdivisions:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a local or State agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local or State agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the agency as a law enforcement officer.

c. The individual is not prohibited by State or federal law from receiving a firearm.

(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a local or State agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 3. G.S. 14-415.14(a) reads as rewritten:

"(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, law enforcement status, and the drivers license number or State

identification card number of the applicant if used for identification in applying for the permit."

Section 4. This act becomes effective December 1, 1997.

In the General Assembly read three times and ratified this the 25th day of June, 1997.

Became law upon approval of the Governor at 4:28 p.m. on the 3rd day of July, 1997.

H.B. 71

CHAPTER 275

AN ACT TO ENABLE THE COUNTY OF HALIFAX AND THE CITY OF ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Halifax-Roanoke Rapids Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of seven members, three of whom shall be appointed to staggered three-year terms by the Roanoke Rapids City Council and three of whom shall be appointed to staggered three-year terms by the Halifax County Board of Commissioners and one of whom shall be appointed by the other six members of the Airport Authority. The members appointed by the Roanoke Rapids City Council shall be qualified voters of the City of Roanoke Rapids, and the members appointed by the Halifax County Board of Commissioners and the Airport Authority shall be qualified voters of the County of Halifax. Each member shall take and subscribe before the Clerk of Superior Court of Halifax County an oath of office and file the same with the Halifax County Board of Commissioners and the Roanoke Rapids City Council. Membership on the Halifax County Board of Commissioners or the Roanoke Rapids City Council and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority shall receive compensation, per diem, or otherwise as the Roanoke Rapids City Council or the Halifax County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4. (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the City of Roanoke Rapids or the County of Halifax.
- (2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the County.
- (3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.
- (4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the City of Roanoke Rapids or the County of Halifax.
- (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.
- (6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Halifax County Board of Commissioners and the Roanoke Rapids City Council.
- (7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.
- (8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.
- (9) To purchase any of its outstanding bonds or notes.
- (10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly

related to the maintenance and furnishing to the general public of a complete air terminal installation.

- (11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
 - (12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.
 - (13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.
 - (14) To have a corporate seal, which may be altered at will.
- (b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the City and the County, by agreement with the City and County, and the City and County may grant and convey, either by gift or for such consideration as the City and County may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the County.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes.

Section 8. The Airport Authority shall make an annual report to the Halifax County Board of Commissioners and the Roanoke Rapids City Council setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Halifax County or the City of Roanoke Rapids, or any subdivision thereof, or to impose any obligation on Halifax County or the City of Roanoke Rapids, or any of their subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law,

which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports and the regulation of aircraft are vested in the Airport Authority. The Halifax County Board of Commissioners or the Roanoke Rapids City Council may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Halifax County and the City of Roanoke Rapids to control, regulate, and provide for the development of aviation in Halifax County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Halifax County Board of Commissioners or the Roanoke Rapids City Council may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Halifax County Board of Commissioners or the Roanoke Rapids City Council.

Section 13. The Airport Authority may expend the funds that are appropriated by the County and City for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then annually thereafter. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Section 15. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Halifax County Board of Commissioners and the Roanoke Rapids City Council, and nothing in this act shall require the Board of Commissioners or City Council to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Halifax-Roanoke Rapids Airport Authority.

Section 16. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 17. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 1997.

Became law on the date it was ratified.

S.B. 537

CHAPTER 276

AN ACT TO AUTHORIZE THE ADDITION TO THE STATE PARKS SYSTEM OF CERTAIN LANDS LOCATED IN TRANSYLVANIA COUNTY ADJACENT TO JOCASSEE LAKE.

Whereas, Section 5 of Article XIV of the Constitution of North Carolina states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources and that these resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, lands currently owned by Duke Power Company in Transylvania County adjacent to Jocassee Lake contain examples of outstanding scenic beauty, harbor many rare species and natural communities that are unique and irreplaceable and have been found to possess geological, biological, scenic, and recreational resources of statewide or even nationwide significance, and, therefore, are suitable for preservation and management in accordance with Articles 2 and 2B of Chapter 113 of the General Statutes; and

Whereas, it is the intent of the General Assembly that a portion of company lands that has been used most significantly for hunting is suitable for multiple uses, including hunting in a manner consistent with Duke Power Company's historic management of lands in Transylvania County adjacent to Jocassee Lake; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The General Assembly authorizes the Department of Environment, Health, and Natural Resources to add lands currently owned by Duke Power Company in Transylvania County adjacent to Jocassee Lake to the State Parks System, as provided in G.S. 113-44.14(b). In determining which particular lands to be added to the State Parks System, the Secretary of Environment, Health, and Natural Resources shall consult with the Board of Commissioners of Transylvania County. As a part of this consultation, the Department of Environment, Health, and Natural Resources shall work in cooperation with the Board of Commissioners to identify land having the most significance as land traditionally available for multiple uses, including hunting. Land that has significance as having been traditionally available for multiple uses, including hunting, shall not be included in lands authorized to be added to the State Parks System by this

act if the Secretary of Environment, Health, and Natural Resources determines that a viable State park with manageable boundaries can be established without the inclusion of that land.

Section 2. This act becomes effective 1 July 1997.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 4:50 p.m. on the 8th day of July, 1997.

S.B. 316

CHAPTER 277

AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"§ 105-129.2. (*Repealed effective January 1, 2002 -- see note*) *Definitions.*

The following definitions apply in this Article:

- (1) ~~Cost. -- Defined in section 179 of the Code.~~ Air courier services. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
- (1a) Central administrative office. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
- (1b) Cost. -- Determined pursuant to regulations adopted under section 1012 of the Code.
- (2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. Office of Management and Budget.
- (3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.
- (4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing, the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census, Office of Management and Budget.

"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, highest, for the preceding three years.
- (2) The county's rank in a ranking of counties by average per capita income from highest to lowest, lowest, for the preceding three years.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for a credit the other credits allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is

claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that ~~business.~~ business:

- (1) Reserved.
- (2) Central administrative office that creates at least 40 new jobs.
- (3) Data processing.
- (4) Manufacturing or processing.
- (5) Warehousing or distribution.

A central administrative office creates at least 40 new jobs if, during the taxable year the taxpayer first uses the property as a central administrative office, the taxpayer hires at least 40 additional full-time employees to fill new positions at the office. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or equipment, the credit for research and ~~development~~ development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ~~ten percent (10%)~~ above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available, equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the

taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the application for the credit, filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax elected in the application, tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce, must specify the credit and the tax against which it will be claimed, Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, specifying the tax against which the credit will be claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of applications for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
- (3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a

credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

Area Enterprise Tier	Amount of Credit
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the

area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- ~~A~~ If a taxpayer that has purchased or leased machinery and equipment and places it in service in this State during the taxable year year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the machinery and equipment are placed in service during the taxable year. If the taxpayer places machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the machinery and equipment placed in service in each area.

Area Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are sold disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(c) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not place part or all of the specified machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

A taxpayer that claims for the taxable year a federal income tax credit under section 41 of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars (\$500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.

"§ 105-129.12. Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars (\$500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.4(a), as amended by Section 1 of this act, reads as rewritten:

"(a) **Type of Business.** -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

- (1) Air courier services.
- (2) Central administrative office that creates at least 40 new jobs.
- (3) Data processing.
- (4) Manufacturing or processing.
- (5) Warehousing or distribution.

A central administrative office creates at least 40 new jobs if, during the taxable year the taxpayer first uses the property as a central administrative office, the taxpayer hires at least 40 additional full-time employees to fill new positions at the office. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection."

Section 3. Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business Tax Credit.

"§ 105-129.15. (Repealed effective January 1, 2002) Definitions.

The following definitions apply in this Article:

- (1) **Business property.** -- Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.
- (2) **Cost.** -- Defined Determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code.
- (3) **Purchase.** -- Defined in section 179 of the Code.

"§ 105-129.16. (Repealed effective January 1, 2002) Credit for investing in business property.

(a) **Credit.** -- A If a taxpayer that has purchased or leased business property and places it in service in this State during the taxable year year, the taxpayer is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars (\$4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five

equal installments beginning with the taxable year in which the property is placed in service.

(b) **Expiration.** -- If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is sold disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) **No Double Credit.** -- A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for business property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not capitalize the property for tax purposes under the Code and the lessor will not claim the credit allowed in this section with respect to the property.

"§ 105-129.17. (Repealed effective January 1, 2002) *Tax election; cap.*

(a) **Tax Election.** -- The credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) **Cap.** -- The credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.18. (Repealed effective January 1, 2002) *Substantiation.*

To claim the credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.19. (Repealed effective January 1, 2002) *Reports.*

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of taxpayers that claimed the credit allowed in this Article.

(2) The cost of business property with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

Section 4. (a) The Department of Commerce shall study the effect of the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes, on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(b) The Department of Commerce shall study the effectiveness of the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period 1994 through 1998 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(c) The Department of Commerce shall report the results of these studies and its recommendations to the 1999 General Assembly by April 1, 1999.

Section 5. G.S. 105-129.3(c), as enacted by this act, is effective when this act becomes law and, notwithstanding G.S. 105-129.3(b), applies retroactively to designations for the 1997 and later calendar years; the other amendments to G.S. 105-129.3 made by this act are effective when this act becomes law and apply to designations for the 1998 and later calendar years. The amendments to G.S. 105-129.5 and G.S. 105-129.6 made by Section 1 of this act are effective for taxable years beginning on or after January 1, 1996. G.S. 105-129.9(e), as enacted by Section 1 of this act, and Section 2 of this act become effective for taxable years beginning on or after January 1, 1998. G.S. 105-129.12, as enacted by Section 1 of this act, and the amendments to G.S. 105-129.4(a) made by Section 1 of this act are effective for taxable years beginning on or after January 1, 1997, and apply to property that the taxpayer begins to use as a central administrative office on or after October 1, 1997. Section 4 of this act is effective when this act

becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1997.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law upon approval of the Governor at 9:51 a.m. on the 9th day of July, 1997.

H.B. 184

CHAPTER 278

AN ACT TO EXEMPT THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN FROM ARTICLE 2A OF THE ADMINISTRATIVE PROCEDURE ACT AND TO REQUIRE THE EMPLOYEE HOSPITAL AND MEDICAL BENEFITS COMMITTEE TO MEET AT LEAST QUARTERLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. -- Article 2A of this Chapter does not apply to the following:

- (1) The Commission.
- (2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.
- (3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.
- (4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
- (5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
- (7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes."

Section 2. G.S. 135-38(c) reads as rewritten:

"(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article. The Committee shall meet not less than once each quarter to review the actions of the Executive Administrator and Board of Trustees. At each meeting, the Executive Administrator shall report to the Committee on any administrative and medical policies which have been issued as rules and regulations in accordance with G.S. 135-39.8, and on

any benefit denials, resulting from the policies, which have been appealed to the Board of Trustees."

Section 3. G.S. 135-39.8 reads as rewritten:

"§ 135-39.8. *Rules and regulations.*

The Executive Administrator and Board of Trustees may issue rules and regulations to implement Parts 2 and 3 of this Article. Rules and regulations adopted in accordance with this section are exempt from the provisions of Article 2A of Chapter 150B of the General Statutes. Rules and regulations of the Board of Trustees shall remain in effect until amended or repealed by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written description of the rules and regulations issued under this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-39.3, all relevant health care providers affected by a rule or regulation, and to any other parties requesting a written description and approved by the Executive Administrator and Board of Trustees to receive a description on a timely basis."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1997.

Became law upon approval of the Governor at 10:20 a.m. on the 9th day of July, 1997.

H.B. 311

CHAPTER 279

AN ACT TO MAKE PERMANENT THE EXCLUSION OF FORFEITED RESERVATION DEPOSITS FROM THE ESCHEAT FUND.

The General Assembly of North Carolina enacts:

Section 1. Subsection (c) of Section 7A of Chapter 18 of the Session Laws of the Second Extra Session of 1996 reads as rewritten:

"(c) Subsection (a) of this section applies to funds held or collected by business associations on or after July 1, 1996. ~~Subsection (a) of this section expires June 30, 1997, but funds collected or held by business associations before June 30, 1997 shall not escheat.~~"

Section 2. G.S. 116B-23 reads as rewritten:

"§ 116B-23. *Exclusion for forfeited reservation deposits.*

~~Property or funds withheld by a business association as a penalty or forfeiture or as damages in the event a person who has reserved the services of the business association fails to make use of and pay for the services, regardless of any practice or policy of the business association related to the return of withheld funds, is not unclaimed or abandoned property. A forfeited reservation deposit is not unclaimed or abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term does not include an application fee, a~~

utility deposit, or a deposit made toward the purchase of real or personal property."

Section 3. This act is effective when it becomes law. All property or funds held as forfeited reservation deposits prior to the effective date of this act pursuant to G.S. 116B-23 shall not escheat.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 10:22 a.m. on the 9th day of July, 1997.

H.B. 101

CHAPTER 280

**AN ACT TO EXTEND THE TIME FOR THE DEPARTMENT OF
HUMAN RESOURCES TO ADMINISTER THE SERVICES OF THE
TRI-COUNTY AREA AUTHORITY.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding S.L. 1997-7, the Department of Human Resources may continue to administer the services of the Tri-County Area Authority in accordance with G.S. 122C-125.1 on behalf and at the request of the board of county commissioners of one or more of the counties that constitute the Tri-County Area Authority. The extension granted under this section shall be for a period not to exceed three calendar months commencing July 1, 1997, and shall be for the sole purpose of allowing one or more of the counties that constitute the Tri-County Area Authority to assess the feasibility of combining with another existing area authority.

Section 2. This act becomes effective July 1, 1997.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law upon approval of the Governor at 10:25 a.m. on the 9th day of July, 1997.

H.B. 545

CHAPTER 281

**AN ACT TO ALLOW THE TOWNS OF TABOR CITY AND
WILLIAMSTON TO EXERCISE EXTRATERRITORIAL
JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM
ITS LIMITS.**

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-360(a), the Town of Williamston may exercise the powers granted in Article 19 of Chapter 160A of the General Statutes over an area extending not more than two miles beyond its limits.

Section 2. Notwithstanding G.S. 160A-360(a), the Town of Tabor City may exercise the powers granted in Article 19 of Chapter 160A of the General Statutes over an area extending not more than two miles beyond its limits.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law on the date it was ratified.

H.B. 681

CHAPTER 282

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF ROXBORO.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Roxboro is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF ROXBORO.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The City of Roxboro, North Carolina, in Person County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'City of Roxboro', hereinafter at times referred to as the 'City'.

"Section 1.2. **Powers.** The City shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the City of Roxboro specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with law. An official map of the City, showing the current municipal boundaries, shall be maintained permanently in the office of the City Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Person County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **City Governing Body; Composition.** The City Council, hereinafter referred to as the 'Council', and the Mayor shall be the governing body of the City.

"Section 2.2. **City Council; Composition; Terms of Office.** The Council shall be composed of five members to be elected by all the qualified voters of the City voting at large for terms of two years, or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the City for a term of two years or until a successor is elected and qualified. The Mayor shall be the official head of the city government and shall preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Section 2.5. **Meetings; Quorum.** In accordance with general law, the Council shall establish a suitable time and place for its regular meeting. Special and emergency meetings may be held as provided by general law. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.6. **Meetings; Voting.** An affirmative vote equal to a majority of the members of the Council not excused from voting on the issue (i.e., assuming no member is excused, three Council members) shall be required to adopt an ordinance, take any action having the effect of an ordinance, or make, ratify, or authorize any contract on behalf of the City. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of the actual membership of the Council (excluding vacant seats), unless the Council has first held a public hearing on the ordinance. Therefore, assuming no vacant seats, unless the Council first holds a public hearing on an ordinance, that ordinance may not be adopted on the date it is introduced except by an affirmative vote of four Council members. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the Council. This section does not modify G.S. 159-17.

"Section 2.7. **Qualification for Office; Compensation; Vacancies.** The qualifications and compensation of the Mayor and Council members shall be in accordance with general law. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan election and runoff election method as provided in G.S. 163-279(a)(4) and G.S. 163-293.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular municipal election.

"Section 3.3. **Election of Council Members.** Five Council members shall be elected in each regular municipal election.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The City shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **City Manager; Appointment; Powers and Duties.** The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager

shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law. The Council may require the City Manager to reside within the City during the City Manager's tenure of office. In case of the absence or disability of the City Manager, the Council may designate a qualified administrative officer of the City to perform the duties of the City Manager during such absence or disability.

"Section 4.3. **City Clerk.** The Council shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Council may direct. The City Clerk shall be subject to the supervisory authority of the City Manager.

"Section 4.4. **Finance Director.** The City Manager shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Manager.

"Section 4.5. **Tax Collector.** The Council shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the City, subject to general law, this Charter, and City ordinances.

"Section 4.6. **City Attorney.** The Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials, and perform other duties required by law or as the Council may direct. The Council may appoint one or more Assistant City Attorneys to assist the City Attorney and to serve in the City Attorney's absence or incapacity and who shall have the same qualifications and duties as the City Attorney.

"Section 4.7. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the City Manager and may organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. STREETS.

"Section 5.1. **Assessments for Street Improvements; Petition Unnecessary.** In addition to any authority granted by general law, the Council may, without the necessity of a petition, order street improvements according to standards and specifications of the City, and assess the total costs or a portion thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, upon the following findings of fact:

- (1) The street improvement project does not exceed 1,200 linear feet; and
- (2) a. The street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard, and it is in the public interest to make such improvement; or
- b. It is in the public interest to connect two streets or portions of a street already improved; or
- c. It is in the public interest to widen a street, or part thereof, which is already improved. Assessments for widening any street or portion of a street without a petition shall be limited to

the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the City's thoroughfare or major street plan for the particular street or part thereof.

"Section 5.2. Street Improvement Defined. For the purposes of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

"Section 5.3. Procedure; Effect of Assessment. In ordering street improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Section 5.4. Property Owner's Responsibility. The Council shall have authority to require every property owner in the City to cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging the streets.

"Section 5.5. City Cutting and Removal; Costs Become Lien. The Council may, by ordinance, establish a procedure whereby City forces may cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging the streets after failure of the abutting property owner after 10 days' notice to do so. In such event, the cost of such cutting and removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the City or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VI. SIDEWALKS.

"Section 6.1. Assessments for Sidewalk Improvements; Petition Unnecessary. In addition to any authority granted by general law, the Council may, without the necessity of a petition, order sidewalk improvements or repairs according to standards and specifications of the City, and assess the total costs or a portion thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes. Regardless of the assessment basis or bases employed, the Council may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of the street. In ordering sidewalk improvements or repairs without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Section 6.2. Property Owner's Responsibility. The Council shall have the authority to require every property owner in the City to keep clean and free of debris, trash, and other obstacles or impediments the sidewalks abutting the owner's property and to require every property owner in the City to cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging the sidewalks abutting the owner's property.

"Section 6.3. City Cleaning or Repair; Costs Become Lien. The Council may, by ordinance, establish a procedure whereby City forces may clean any sidewalk, remove therefrom any debris or trash, or cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging any sidewalk after failure of the abutting property owner after 10 days' notice to do so. In such event, the cost of the repair, cleaning, cutting, or removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the City or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VII. WATER AND SEWER.

"Section 7.1. Construction Outside Corporate Limits. In addition to any authority granted by general law, the City is authorized to construct or reconstruct water and sewer lines and facilities outside the corporate limits of the City as the Council may deem appropriate, to furnish water and sewer services to industries outside the city limits, and to make such charges for the services as the Council may deem reasonable.

"Section 7.2. Acquisition of Existing Facilities. In addition to any authority granted by general law, the City is authorized to acquire, by purchase, gift, or exchange existing water and sewer lines and facilities located outside of the corporate limits of the City.

"ARTICLE VIII. TAXATION.

"Section 8.1. Motor Vehicles Tax. The City may levy a license or privilege tax upon motor vehicles resident therein in an amount up to ten dollars (\$10.00) per year, or the amount prescribed by G.S. 20-97, whichever is greater.

"ARTICLE IX. CITY LAKE REGULATION.

"Section 9.1. Regulation of City Lakes. In addition to any authority granted by general law, the City is authorized, by ordinance, to regulate, restrict, or prohibit the use of any lakes owned by the City, to prescribe rules under which fishing, boating, and other uses may be permitted thereon, to fix charges for such uses, and to otherwise provide for their operation in accordance herewith. The provisions of any ordinance adopted under authority of this section shall not conflict with applicable State laws, rules, or regulations.

"ARTICLE X. CLAIMS AGAINST THE CITY.

"Section 10.1. Settlement of Claims by City Manager. The Council may authorize the City Manager to settle claims against the City for: (i) personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars (\$5,000) and does not exceed the actual loss sustained; and (ii) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets when

the amount involved in any such settlement does not exceed five thousand dollars (\$5,000) and does not exceed the actual loss sustained. Settlement of a claim by the City Manager pursuant to this section shall constitute a complete release of the City from any and all damages sustained by the person involved in such settlement in any manner arising out of the incident, occasion, or taking complained of. All settlements and all releases shall be approved by the City Attorney.

"ARTICLE XI. PROPERTY DISPOSITION.

"Section 11.1. Disposal of Surplus Personal Property. The City may dispose of surplus personal property valued at less than two thousand dollars (\$2,000) for any one item or group of items using the procedures authorized in G.S. 160A-266(c)."

Section 2. The purpose of this act is to revise the Charter of the City of Roxboro and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 253, Private Laws of 1854-55
Chapter 268, Private Laws of 1854-55
Chapter 109, Private Laws of 1879
Chapter 92, Private Laws of 1881
Chapter 168, Private Laws of 1887
Chapter 71, Private Laws of 1899
Chapter 134, Private Laws of 1901
Chapter 303, Private Laws of 1903
Chapter 762, Public Laws of 1905
Chapter 142, Private Laws of 1907
Chapter 909, Public Laws of 1907
Chapter 244, Private Laws of 1913
Chapter 137, Private Laws of 1915
Chapter 125, Private Laws, Extra Session of 1921
Chapter 175, Private Laws of 1925
Chapter 84, Private Laws of 1927
Chapter 211, Public-Local Laws of 1941
Chapter 288, Session Laws of 1943, except for Section 3
Chapter 12, Session Laws of 1953
Chapter 502, Session Laws of 1955
Chapter 510, Session Laws of 1955
Chapter 42, Session Laws of 1957
Chapter 425, Session Laws of 1961
Chapter 619, Session Laws of 1963
Chapter 643, Session Laws of 1965, except for Section 5

Chapter 978, Session Laws of 1965.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

Section 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 7. All existing ordinances, resolutions, and other provisions of the City of Roxboro not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Section 10. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law on the date it was ratified.

H.B. 867

CHAPTER 283

AN ACT TO CLARIFY THAT THE GENERAL LAW APPLIES TO ANNEXATION OF CERTAIN PARCELS OF LAND BY THE TOWN OF MATTHEWS, TO EXEMPT THOSE PARCELS FROM PRIOR LOCAL ACTS CONCERNING ZONING JURISDICTION AND TO MAKE A TECHNICAL CORRECTION IN A BILL MOVING CERTAIN PARCELS FROM MATTHEWS TO CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. Nothing in Chapter 567 of the 1989 Session Laws or any other local act prohibits annexation by the Town of Matthews of Mecklenburg County tax parcels 215-062-01, 215-062-02, 215-063-01, or 215-081-15. Annexation of such parcels is governed by Article 4A of Chapter 160A of the General Statutes, and this section conveys no annexation authority beyond that of Article 4A of Chapter 160A of the General Statutes.

Section 2. Except for tax parcels 215-062-01, 215-062-02, 215-063-01, and 215-081-15 as they exist on the effective date of this act, the authority of Chapter 161 of the 1991 Session Laws is extended to the area previously limited by Section 4 of that act.

Effective June 30, 1997, Section 1 of S.L. 1997-220 reads as rewritten:

"Section 1. The following described property is removed from the corporate limits of the Town of Matthews and is added to the corporate limits of the City of Charlotte:

The Waters property, Mecklenburg County tax parcels 227-362-97 and 227-362-98, 227-362-99 and the Maynard property, Mecklenburg County tax parcel 227-141-08."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law on the date it was ratified.

S.B. 668

CHAPTER 284

AN ACT TO AMEND THE EDUCATION REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12(5) reads as rewritten:

"(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, ~~shall have~~ has passed an examination to the satisfaction of the Board, in 'accounting,' 'auditing,' 'business law,' and other related subjects.

A person is eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, ~~who if the person~~ is a citizen of the United States, has declared the intention of becoming a citizen, is a resident alien, or is a citizen of a foreign jurisdiction which extends to citizens of this State like or similar privileges to be examined or certified, is 18 years of age or over, and is of good moral character, and submits evidence satisfactory to the Board that: character.

- a. ~~He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and~~
- b. ~~His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting.~~
- c. ~~Repealed by Session Laws 1991, c. 214, s. 1, effective January 1, 1997.~~

To be eligible to take the examination given by the Board, a person shall submit evidence satisfactory to the Board that the person holds a bachelors degree from a college or university that is accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards that are substantially equivalent to a regionally accredited institution. The degree studies shall include a concentration in accounting as prescribed by the Board or shall be supplemented with courses that are

determined by the Board to be substantially equivalent to a concentration in accounting.

Provided, however, ~~the~~ The Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test ~~his~~ the candidate's educational qualifications that ~~he~~ the candidate is as well qualified as if ~~he~~ the candidate met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

To be eligible to receive a certificate of qualification to practice as a certified public accountant, a person shall submit evidence satisfactory to the Board that:

- a. The person has completed 150 semester hours and received a bachelors degree with a concentration in accounting and other courses that the Board may require from a college or university that is accredited by a regional accrediting association or from a college or university determined by the Board to have standards that are substantially equivalent to those of a regionally accredited institution.
- b. Such applicant, in addition to passing the examination given by the Board, shall have The person has the endorsement as to ~~his~~ the person's eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of Columbia and shall have had either: Columbia.
- c. The person has one of the following:
 - a-1. Two years ~~One~~ year's experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of Columbia, ~~or~~ Columbia.
 - b-2. Five ~~Four~~ years of experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution; ~~or~~ institution.
 - c-3. Five ~~Four~~ years of experience in the field of accounting; accounting.
 4. ~~or five~~ Four years of experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting associations; ~~or~~ associations.
 - d-5. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

~~A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such the person shall have has had the required experience."~~

Section 2. This act is effective when it becomes law and applies to applications for certificates of qualification received after December 31, 2000.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law upon approval of the Governor at 11:52 a.m. on the 10th day of July, 1997.

H.B. 400

CHAPTER 285

AN ACT TO REWRITE THE AUTHORITY OF THE STATE BANKING COMMISSION TO ASSESS BANKS AND CONSUMER FINANCE LICENSEES FOR THE MAINTENANCE AND OPERATION OF THE OFFICE OF THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-122 reads as rewritten:

"§ 53-122. ~~Fees for examinations and other services, and assessments.~~

(a) ~~For the purpose of paying the salaries and necessary traveling expenses operating and maintaining the office of the Commissioner of Banks, State bank examiners, assistant State bank examiners, clerks, stenographers and other employees of the Commissioner of Banks, banks and consumer finance licensees doing business under the authority of Chapter 53 of the General Statutes shall pay the following fees and assessments shall be paid into the office of the Commissioner of Banks; Banks within 10 days after the assessment:~~

- (1) ~~Each bank and each branch and each limited service facility of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the Commissioner of Banks and is authorized to do business or is in process of voluntary liquidation, shall, within 10 days after the assessment has been made, pay into the office of the Commissioner of Banks according to its total resources as shown by its report of condition made to the Commissioner of Banks at the close of business December 31, 1978, and on the thirty-first day of December, or the date most nearly approximating same of each year thereafter on which a report of condition is made to the Commissioner of Banks not in excess of the following fees for its annual examination: eighty-five dollars (\$85.00) for the first one hundred thousand dollars (\$100,000) of assets or less, twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof, and three dollars and fifty cents (\$3.50) for each~~

~~one hundred thousand dollars (\$100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars (\$170.00) for the first one hundred thousand dollars (\$100,000) of assets or less, and twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof.~~

- (2) ~~All examinations made other than those provided for in subdivision (1) hereof shall be deemed special examinations and for such special examination the bank shall pay into the office of the Commissioner of Banks the following fees for each special examination: eighty-five dollars (\$85.00) for the first one hundred thousand dollars (\$100,000) of assets or less, twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof, and three dollars and fifty cents (\$3.50) for each one hundred thousand dollars (\$100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars (\$170.00) for the first one hundred thousand dollars (\$100,000) of assets or less, and twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof. The fees paid for special examination shall be based on the assets of the bank examined as of the date of such examination.~~

- (1) Banks. -- Each bank shall pay a cumulative assessment based on its total assets, as shown on its report of condition made to the Commissioner of Banks as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: (i) on the first fifty million dollars (\$50,000,000) of assets, or fraction thereof, six thousand dollars (\$6,000); (ii) on assets over fifty million dollars (\$50,000,000), but not more than two hundred fifty million dollars (\$250,000,000), twelve dollars (\$12.00) per one hundred thousand dollars (\$100,000), or fraction thereof; (iii) on assets over two hundred fifty million dollars (\$250,000,000), but not more than five hundred million dollars (\$500,000,000), nine dollars (\$9.00) per one hundred thousand dollars (\$100,000), or fraction thereof; (iv) on assets over five hundred million dollars (\$500,000,000), but not more than one billion dollars (\$1,000,000,000), seven dollars (\$7.00) per one hundred thousand dollars (\$100,000), or fraction thereof; (v) on assets over one billion dollars (\$1,000,000,000), but not more than ten billion dollars (\$10,000,000,000), five dollars (\$5.00) per one hundred thousand dollars (\$100,000), or fraction thereof; and (vi) on assets over ten billion dollars (\$10,000,000,000), three dollars (\$3.00) per one hundred thousand dollars (\$100,000), or fraction thereof.

Additionally, each bank shall pay an assessment on trust assets held by it in the amount of one dollar (\$1.00) per one hundred thousand dollars (\$100,000) of the assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets.

- (2) Consumer Finance Licensees. -- Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars (\$18.00) per one hundred thousand dollars (\$100,000) of assets, or fraction thereof, plus a fee of three hundred dollars (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars (\$500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same.

- (3) Special Assessment. -- If the Commissioner of Banks determines that the financial condition or manner of operation of a bank or consumer finance licensee warrants further examination or an increased level of supervision, or in the event of a merger or conversion of a savings institution organized under State or federal law into a bank, or conversion of a federally chartered bank into a State bank, the institutions may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in subdivision (1) of subsection (a) of this section for banks or subdivision (2) for consumer finance licensees.

(3) (b) The Commissioner of Banks State Banking Commission may by rule set the amount to be collected for processing any application or petition proceeding required by law to be filed with the Commissioner and for obtaining copies of any publication or public record of the Banking Commission.

(4) (c) In all civil and criminal cases tried in any of the courts of this State wherein any of the employees of the Commissioner of Banks are used as witnesses, a fee of ten dollars (\$10.00) per day, to be determined by the presiding judge, and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the Commissioner of Banks by the clerk of the court of the county in which the case is tried and thereafter charged in bill of costs as are other costs incurred in the trial; and in all civil actions tried in any of the courts of this State, wherein any of the employees of the Commissioner of Banks are required as witnesses, the party requiring such employee as witness shall deposit with the Commissioner of Banks when the subpoena is served a sufficient sum to cover the witness fee of ten dollars (\$10.00) per day and expenses, and such sums as may thus be advanced shall thereafter be charged in the bill of costs as other costs are charged. All sums paid under this subdivision shall be paid to the Commissioner of Banks as are fees for examination and used in like manner. matter.

(5) (d) The total compensation and necessary traveling expenses of the employees office of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided

such the expenses and compensation may ~~exceed~~ the total fees collected in any year when surplus funds are available.

~~(6) (c) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under subdivisions (1) and (2) this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees and assessments provided for in subdivisions (1) and (2) of this section but not in a percentage greater than fifty percent (50%) nor to an amount which will reduce the amount of the fees to be collected below the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, this section. If the estimated fees and assessments provided for under subdivisions (1) and (2) this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees and assessments provided for in subdivisions (1) and (2) of this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. Such fees shall be reduced whenever a surplus exists which exceeds the estimated cost of operating the office of the Commissioner of Banks for one year, even if such reduction shall result in the collection of a smaller sum than the estimated cost of maintaining the office of the Commissioner of Banks for that year. In no event shall any surplus at the end of any fiscal year resulting from the collection of fees and assessments pursuant to this section revert to the general fund.~~

(f) The Commissioner of Banks may collect the assessments provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission."

Section 2. G.S. 53-184(b) reads as rewritten:

~~"(b) Each licensee shall file annually with the Commissioner of Banks on or before the thirty-first day of March for the 12 months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. Such reports Reports shall disclose in detail and under appropriate headings the resources, assets and liabilities of such licensee at the beginning and at the end of the period, the licensee, the income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, the ratios of the profits to the assets reported, the monthly average number and amount of loans outstanding and a classification of loans made, by size and by security, and such any other information as the Commissioner may require. Such reports Reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of such the licensee."~~

Section 3. G.S. 53-184(d) is repealed.

Section 4. This act becomes effective January 1, 1998, and applies to assessments due for years beginning with 1998.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law upon approval of the Governor at 11:56 a.m. on the 10th day of July, 1997.

H.B. 460

CHAPTER 286

AN ACT TO ABOLISH THE NORTH CAROLINA AQUARIUMS COMMISSION, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO ADOPT ENTRANCE FEES FOR THE NORTH CAROLINA AQUARIUMS, AND TO MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 28 of Article 7 of Chapter 143B of the General Statutes is repealed.

Section 2. G.S. 143B-289.19 is recodified by transferring it from Part 5A of Article 7 of Chapter 143B of the General Statutes to Part 5B of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"§ 143B-289.19. ~~Office of Marine Affairs~~ Division of North Carolina Aquariums -- creation.

~~There~~ The Division of North Carolina Aquariums is created in the Department of Administration the Office of Marine Affairs. Environment, Health, and Natural Resources."

Section 3. G.S. 143B-289.20 reads as rewritten:

"§ 143B-289.20. ~~Office of Marine Affairs~~ Division of North Carolina Aquariums -- organization; powers and duties.

(a) ~~The Office~~ The Division of North Carolina Aquariums shall be organized as prescribed by the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources and shall exercise the following powers and duties:

(1) Repealed by Session Laws 1991, c. 320, s. 3.

(1a) ~~To establish~~ Establish and maintain the North Carolina ~~Aquariums; Aquariums.~~

(1b) ~~To administer~~ Administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives ~~periodically; periodically.~~

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources on the most appropriate use consistent with the goals and objectives of the ~~Aquariums; Aquariums.~~

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and ~~objectives; objectives.~~

d. Recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources any policies and

procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium ~~programs; programs.~~

- e. Review Aquarium budget submissions to the Secretary of the ~~Department of Environment, Health, and Natural Resources; Resources.~~
 - f. ~~Recruit and recommend to the Secretary of the Department of Environment, Health, and Natural Resources candidates for the positions of directors of the North Carolina Aquariums; and Aquariums.~~
 - g. Create local advisory committees in accordance with the provisions of G.S. 143B-289.22.
- (2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).
 - (4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.
 - (7) Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section."

Section 4. G.S. 143B-289.22 reads as rewritten:

"§ 143B-289.22. *Local advisory committees; duties; membership.*

Local advisory committees created pursuant to G.S. 143B-289.20(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary of the ~~Department of Environment, Health, and Natural Resources~~ for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

Section 5. Part 5B of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-289.23. *North Carolina Aquariums; fees; fund.*

(a) **Fees.** -- The Secretary of Environment, Health, and Natural Resources may adopt a schedule of uniform entrance fees for the North Carolina Aquariums.

(b) **Fund.** -- The North Carolina Aquariums Fund is hereby created as a special and non-reverting fund. The North Carolina Aquariums Fund shall be used for repair, maintenance, educational exhibit construction, and operational expenses at existing aquariums and to match private funds that are raised for these purposes.

(c) **Disposition of Fees.** -- All entrance fee receipts shall be credited to the North Carolina Aquariums Fund. The Secretary of Environment, Health, and Natural Resources may expend monies from the North Carolina Aquariums Fund only upon the authorization of the General Assembly."

Section 6. G.S. 143B-279.3(b)(23) is repealed.

Section 7. G.S. 120-123(59) is repealed.

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law upon approval of the Governor at 11:57 a.m. on the 10th day of July, 1997.

H.B. 852

CHAPTER 287

AN ACT TO PROVIDE THAT INFORMATION IN A 911 DATABASE OBTAINED FROM A TELEPHONE COMPANY IS CONFIDENTIAL IF REQUIRED BY THE AGREEMENT OBTAINING THE INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-1.5. 911 database.

Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers which is contained in a county 911 database is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911 automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law upon approval of the Governor at 11:57 a.m. on the 10th day of July, 1997.

S.B. 521

CHAPTER 288

AN ACT TO ESTABLISH PILOT PROGRAMS ON SEXUAL ASSAULT FOR INMATES AND EMPLOYEES OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. The Department of Correction shall establish pilot programs on sexual assault for inmates at three units of the State prison system. The Department shall select units with greater than average levels of inmate violence for participation in these pilot programs.

Section 2. Each pilot program shall operate as follows:

- (1) The Department shall provide, as part of every inmate's orientation, a program on sexual assault, with a goal to complete that program within seven days of commitment to the Department of Correction. The program shall provide inmates with at least the following information:

- a. An accurate presentation pertaining to sexual assault violence;
 - b. Information on preventing and reducing the risk of sexual assault;
 - c. Information on available counseling for victims of sexual assault; and
 - d. The procedure for victims of sexual assault to request counseling.
- (2) The Department shall provide sexual assault counseling on-site at the prison unit to any prisoner requesting it. Counselors shall be granted reasonable access to Department of Correction institutions and prisoners for the purpose of providing confidential sexual assault counseling.
 - (3) Unless the Director of the Division of Prisons finds a particular item to be unsuitable, the Department shall allow the distribution of materials on sexual assault and rape trauma syndrome developed or sponsored by community rape crisis centers or nonprofit organizations with expertise in sexual assault. Any such material provided to a correctional institution shall be made available to inmates in places where they may make use of them privately and without attracting undue attention, such as in the library, law library, medical clinic, recreation hall, mental health offices, and educational lobby areas.
 - (4) The Department shall post notices of the availability of any community-based rape crisis counselors who are willing to provide confidential counseling. Communications between prisoners and rape crisis counselors are confidential. The Department shall cooperate with community rape crisis centers seeking to identify and provide counseling to former inmates who were the victims of sexual assault.
 - (5) The Department shall collect statistical data of all known, reported, or suspected incidents of sexual aggression or sexually motivated violence occurring at units participating in the pilot programs. The Department shall compile this data on a quarterly and annual basis.
 - (6) The Department shall develop and implement employee training on the identification and prevention of sexual assault among inmates, in coordination with the Department's employee basic training program. The training shall be provided to new employees at orientation and shall also be part of annual employee training.
 - (7) The Department shall evaluate and classify each prisoner with respect to the probable risk of sexual assault. When feasible, incoming inmates shall be handled separately until this classification is made. The classification shall be prominently displayed in the inmate's confidential file, and the Department shall consider the prisoner's classification when making housing assignments.
 - (8) The Department shall also rate prisoners as potential sexual assault offenders based upon (i) criminal history; (ii) incidents occurring during confinement; and (iii) reports of incidents that the

Department determines to be credible. The Department shall take the prisoners' potential for sexual assault into consideration when making housing assignments.

- (9) The Department shall ensure that prisoners rated vulnerable or highly vulnerable to sexual assault and prisoners rated as potential assaulters are not housed in the same cell or room holding four or fewer inmates or placed in the showers at the same time to the extent that it is practicable. Any exceptions to this policy shall be reported to the Secretary within three days.

Section 3. The Department may use funds available to the Department for the 1997-98 fiscal year to implement the pilot programs established in this act.

Section 4. The Department of Correction shall report by May 1, 1998, to the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees and the Senate and House Appropriations Subcommittees on Justice and Public Safety on the effectiveness of the pilot programs established in this act and on the advisability of establishing additional programs at other prison units. The report shall include information on:

- (1) The percentage of inmate orientation programs on sexual assault completed within seven days of commitment; and
- (2) The Department's success in segregating prisoners rated vulnerable to sexual assault from prisoners rated as potential assaulters.

Section 5. This act becomes effective August 1, 1997.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 11:58 a.m. on the 10th day of July, 1997.

S.B. 885

CHAPTER 289

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE LAW REGARDING THE TIME FOR EXECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-194 reads as rewritten:

"§ 15-194. *Time for execution.*

In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Department of Correction. The warden of the State penitentiary at Raleigh shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than 45 days from the date of receiving written notification from the Attorney General of North Carolina or the district attorney who prosecuted the case of any one of the following:

- (1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;

- (2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);
- (4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);
- (5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or
- (6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The warden shall send a certified copy of the document fixing the date to the clerk of superior court of the county in which the case was tried or, if venue was changed, in which the defendant was indicted. The certified copy shall be recorded in the minutes of the court. The warden shall also send certified copies to the capital defendant, the capital defendant's attorney, the district attorney who prosecuted the case, and the Attorney General of North Carolina."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 11:59 a.m. on the 10th day of July, 1997.

S.B. 844

CHAPTER 290

AN ACT TO STRENGTHEN THE OPEN MEETINGS LAW TO REQUIRE ACCOUNTS OF CLOSED MEETINGS AND TO CLARIFY WHAT ACTIONS ON ECONOMIC DEVELOPMENT INCENTIVES MAY BE TAKEN IN CLOSED SESSIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11.

Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

Section 2. G.S. 143-318.11(a) reads as rewritten:

"(a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of

a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct."

Section 3. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 11:59 a.m. on the 10th day of July, 1997.

H.B. 407

CHAPTER 291

AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 39 of the General Statutes is repealed.

Section 2. Chapter 39 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3A.

"Uniform Fraudulent Transfer Act.

"§ 39-23.1. Definitions.

As used in this Article:

(1) 'Affiliate' means:

- a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or
 2. Solely to secure a debt, if the person has not exercised the power to vote;
 - b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,
 1. As a fiduciary or agent without sole power to vote the securities; or
 2. Solely to secure a debt, if the person has not in fact exercised the power to vote;
 - c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
 - d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
- (2) 'Asset' means property of a debtor, but the term does not include:
 - a. Property to the extent it is encumbered by a valid lien;
 - b. Property to the extent it is generally exempt under nonbankruptcy law; or
 - c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) 'Creditor' means a person who has a claim.
- (5) 'Debt' means liability on a claim.
- (6) 'Debtor' means a person who is liable on a claim.
- (7) 'Insider' includes:
 - a. If the debtor is an individual,
 1. A relative of the debtor or of a general partner of the debtor;
 2. A partnership in which the debtor is a general partner;
 3. A general partner in a partnership in which the debtor is a general partner; or
 4. A corporation of which the debtor is a director, officer, or person in control;
 - b. If the debtor is a corporation,
 1. A director of the debtor;
 2. An officer of the debtor;
 3. A person in control of the debtor;

- 4. A partnership in which the debtor is a general partner;
- 5. A general partner in a partnership in which the debtor is a general partner; or
- 6. A relative of a general partner, director, officer, or person in control of the debtor;
- c. If the debtor is a partnership,
 - 1. A general partner in the debtor;
 - 2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
 - 3. Another partnership in which the debtor is a general partner;
 - 4. A general partner in a partnership in which the debtor is a general partner; or
 - 5. A person in control of the debtor;
- d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- e. A managing agent of the debtor.
- (8) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (9) 'Person' means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.
- (10) 'Property' means anything that may be the subject of ownership.
- (11) 'Relative' means an individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
- (12) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.
- (13) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 39-23.2. Insolvency.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the

value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 39-23.3. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, nonexclusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 39-23.4. Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

- (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;
- (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor;
- (12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and
- (13) The debtor transferred the assets in the course of legitimate estate or tax planning.

"§ 39-23.5. Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

- (1) A transfer is made:
 - a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
 - b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.
- (2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

- (3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.
- (4) A transfer is not made until the debtor has acquired rights in the asset transferred.
- (5) An obligation is incurred:
 - a. If oral, when it becomes effective between the parties; or
 - b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

"§ 39-23.7. Remedies of creditors.

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;
- (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,
 - a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"§ 39-23.8. Defenses, liability, and protection of transferee.

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

- (1) The first transferee of the asset or the person for whose benefit the transfer was made; or
- (2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) A lien on or a right to retain any interest in the asset transferred;
 - (2) Enforcement of any obligation incurred; or
 - (3) A reduction in the amount of the liability on the judgment.
- (e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

- (1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
 - (2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial Code.
- (f) A transfer is not voidable under G.S. 39-23.5(b):
- (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
 - (2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - (3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

"§ 39-23.9. Extinguishment of cause of action.

A cause of action with respect to a fraudulent or voidable transfer or obligation under this Article is extinguished unless action is brought:

- (1) Under G.S. 39-23.4(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), within four years after the transfer was made or the obligation was incurred; or
- (3) Under G.S. 39-23.5(b), within one year after the transfer was made or the obligation was incurred.

"§ 39-23.10. Supplementary provisions.

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"§ 39-23.11. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"§ 39-23.12. Short title.

This Article may be cited as the Uniform Fraudulent Transfer Act."

Section 3. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the Uniform Fraudulent Transfer Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate.

Section 4. This act is effective October 1, 1997, and applies to all transfers subject to this act made on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 12:00 p.m. on the 10th day of July, 1997.

H.B. 754

CHAPTER 292

AN ACT TO LEVY AN EXCISE TAX ON ILLICIT SPIRITUOUS LIQUOR, AN EXCISE TAX ON MASH, AND AN EXCISE TAX ON ILLICIT MIXED BEVERAGES.

The General Assembly of North Carolina enacts:

Section 1. Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

"Schedule B-D. ~~Controlled Substance Tax.~~ Unauthorized Substances Taxes.

"§ 105-113.105. *Purpose.*

The purpose of this Article is to levy an excise tax to generate revenue for State and local law enforcement agencies and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

"§ 105-113.106. *Definitions.*

The following definitions apply in this Article:

- (1) **Controlled Substance.** -- Defined in G.S. 90-87.
- (2) **Repealed** by Session Laws 1995, c. 340, s. 1.
- (3) **Dealer.** -- Any of the following:
 - a. A person who actually or constructively possesses more than 42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight.
 - b. A person who in violation of Chapter 18B of the General Statutes possesses illicit spirituous liquor for sale.
 - c. A person who in violation of Chapter 18B of the General Statutes possesses mash.
 - d. A person who in violation of Chapter 18B of the General Statutes possesses an illicit mixed beverage for sale.
- (4) **Repealed** by Session Laws 1995, c. 340, s. 1.
- (4a) **Reserved.** Illicit mixed beverage. -- A mixed beverage, as defined in G.S. 18B-101, composed in whole or in part from spirituous liquor on which the charge imposed by G.S. 18B-804(b)(8) has not been paid, but not including a premixed cocktail served from a closed package containing only one serving.
- (4b) **Reserved.** Illicit spirituous liquor. -- Spirituous liquor, as defined in G.S. 105-113.68, not authorized by the North Carolina Alcoholic Beverage Control Commission. Some examples of illicit spirituous liquor are the products known as 'bootleg liquor', 'moonshine', 'non-tax-paid liquor', and 'white liquor'.

- (4c) Low-street-value drug. -- Any of the following controlled substances:
 - a. An anabolic steroid as defined in G.S. 90-91(k).
 - b. A depressant described in G.S. 90-89(d), 90-90(d), 90-91(b), or 90-92(a).
 - c. A hallucinogenic substance described in G.S. 90-89(c) or G.S. 90-90(e).
 - d. A stimulant described in G.S. 90-89(e), 90-90(c), 90-91(j), 90-92(d), or 90-93(a)3.
 - e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-92(c), (e), or (f), or 90-93(a)1.
- (5) Repealed by Session Laws 1995, c. 340, s. 1.
- (6) Marijuana. -- All parts of the plant of the genus *Cannabis*, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.
- (6a) Mash. -- The fermentable starchy mixture from which spirituous liquor can be distilled.
- (7) Person. -- Defined in G.S. 105-228.90.
- (8) Secretary. -- Defined in G.S. 105-228.90.
- (9) Unauthorized substance. -- A controlled substance, an illicit mixed beverage, illicit spirituous liquor, or mash.

"§ 105-113.107. *Excise tax on controlled unauthorized substances.*

(a) Controlled Substances. -- An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

- (1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.
- (1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.
- (2) At the rate of two hundred dollars (\$200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.
- (2a) At the rate of fifty dollars (\$50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.
- (3) At the rate of four hundred dollars (\$400.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(b) Illicit Spirituous Liquor. -- An excise tax is levied on illicit spirituous liquor possessed by a dealer at the following rates:

- (1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each gallon, or fraction thereof, of illicit spirituous liquor sold by the drink.
- (2) At the rate of twelve dollars and eighty cents (\$12.80) for each gallon, or fraction thereof, of illicit spirituous liquor not sold by the drink.

(c) Mash. -- An excise tax is levied on mash possessed by a dealer at the rate of one dollar and twenty-eight cents (\$1.28) for each gallon or fraction thereof.

(d) Illicit Mixed Beverages. -- A tax is levied on illicit mixed beverages sold by a dealer at the rate of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.

"§ 105-113.107A. Exemptions.

(a) Authorized Possession. -- The tax levied in this Article does not apply to a controlled substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) Certain Marijuana Parts. -- The tax levied in this Article does not apply to the following marijuana:

- (1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.
- (2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.
- (3) Marijuana seeds that have been sterilized and are incapable of germination.
- (4) Roots of the marijuana plant.

"§ 105-113.108. Reports; revenue stamps.

The Secretary shall issue stamps to affix to controlled unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

"§ 105-113.109. When tax payable.

The tax imposed by this Article is payable by any dealer who actually or constructively possesses a controlled unauthorized substance in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid controlled unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the controlled unauthorized substance. Once the tax due on a controlled unauthorized substance has

been paid, no additional tax is due under this Article even though the ~~controlled~~ unauthorized substance may be handled by other dealers.

"§ 105-113.110A. Interest and penalty.

The tax due under this Article shall bear interest at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails, or refuses to pay the tax due under this Article is liable for a penalty equal to fifty percent (50%) of the tax.

"§ 105-113.111. Assessments.

Notwithstanding any other provision of law, an assessment against a dealer who possesses a ~~controlled~~ unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

"§ 105-113.112. Confidentiality of information.

Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

"§ 105-113.113. Use of tax proceeds.

(a) Special Account. -- The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State ~~Controlled Unauthorized~~ Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

- (1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.
- (2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely

contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

(b) Distribution. -- The Secretary shall remit seventy-five percent (75%) of the part of the unencumbered tax proceeds that was collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(c) Refunds. -- The refund of a tax that has already been distributed shall be drawn initially from the State ~~Controlled~~ Unauthorized Substances Tax Account. The amount of refunded taxes that had been distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account."

Section 2. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 2nd day of July, 1997.

Became law upon approval of the Governor at 12:01 p.m. on the 10th day of July, 1997.

S.B. 1074

CHAPTER 293

AN ACT TO OFFICIALLY RECOGNIZE THE INDIANS PREVIOUSLY RECOGNIZED IN THE GENERAL STATUTES AS THE HALIWA TRIBE AS THE HALIWA SAPONI TRIBE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 71A-5 reads as rewritten:

"§ 71A-5. Haliwa Saponi Tribe of North Carolina; rights, privileges, immunities, obligations and duties.

The Indians now residing in Halifax, Warren and adjoining counties of North Carolina, originally found by the first permanent white settlers on the Roanoke River in Halifax and Warren Counties, and claiming descent from certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after April 15, 1965, be designated and officially recognized as the Haliwa Saponi Tribe of North Carolina, and they shall continue to enjoy all their rights, privileges and immunities as citizens of the State as now or hereafter provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law."

Section 2. G.S. 143B-407(a) reads as rewritten:

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and 18

representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the ~~Haliwa~~, Haliwa Saponi, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 1997.

Became law upon approval of the Governor at 11:54 a.m. on the 10th day of July, 1997.

H.B. 42

CHAPTER 294

AN ACT TO EXTEND AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE CAROLINA TRACE COMMUNITY IN LEE COUNTY AND TO EXTEND THE APPLICATION OF THAT ACT TO THE LAKE ROYALE COMMUNITY IN FRANKLIN AND NASH COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 96 of the 1995 Session Laws reads as rewritten:

"Sec. 5. This act is effective upon ratification and shall expire ~~July 1, 1997~~, July 1, 1999."

Section 1.1. Chapter 96 of the 1995 Session Laws is amended by adding new sections to read:

"Section 3.1. (a) The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Lake Royale Property Owners Association, Inc., or the members of the Lake Royale Property Owners Association, Inc. For purposes of this act, streets, roadways, and alleys in the Lake Royale Community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

(b) This section is enforceable by any company policeman appointed under Chapter 74E of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Lake Royale Property Owners Association, Inc.

(c) This section shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Lake Royale Property Owners Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Lake Royale Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Boards of Commissioners of Franklin or Nash County, whichever has jurisdiction. Pursuant to G.S. 20-141, the Franklin and Nash County Boards of Commissioners may authorize by ordinance higher or lower speeds.

(d) This section applies only to the Lake Royale Community in Franklin and Nash Counties.

Section 3.2. Sections 3 and 4 of Chapter 96 of the 1995 Session Laws are amended by deleting 'This act', and substituting 'Sections 1 through 3 of this act'."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1997.

Became law on the date it was ratified.

H.B. 340

CHAPTER 295

AN ACT PROVIDING THAT THE CITY OF KANNAPOLIS MAY CONDEMN OR ACQUIRE PROPERTY IN ROWAN COUNTY WITHOUT THE CONSENT OF THE ROWAN COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 153A-15, the City of Kannapolis may condemn or acquire real property or an interest in real property located in Rowan County without the consent or approval of the Rowan County Board of Commissioners.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1997.

Became law on the date it was ratified.

H.B. 675

CHAPTER 296

AN ACT AUTHORIZING A ONE-STEP SERVICE PROCESS IN SPECIFIED HOUSING CODE CASES IN THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 113 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~City of Asheville~~ Cities of Asheville and Rocky Mount only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1997.

Became law on the date it was ratified.

S.B. 910

CHAPTER 297

AN ACT TO CHANGE THE STATUTE OF LIMITATIONS FOR ACTIONS ON OFFICIAL BONDS FROM SIX YEARS TO THREE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-50(a)(1) is repealed.

Section 2. G.S. 1-52 reads as rewritten:

"§ 1-52. *Three years.*

Within three years an action --

- (1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).
- (1a) Upon the official bond of a public officer.
- (2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.
- (3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.
- (4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.
- (5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated.
- (6) Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.
- (7) Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.
- (8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.
- (9) For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.
- (10) Repealed by Session Laws 1977, c. 886, s. 1.

- (11) For the recovery of any amount under and by virtue of the provisions of the Fair Labor Standards Act of 1938 and amendments thereto, said act being an act of Congress.
- (12) Upon a claim for loss covered by an insurance policy which is subject to the three-year limitation contained in lines 158 through 161 of the Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).
- (13) Against a public officer, for a trespass, under color of his office.
- (14) An action under Chapter 75B of the General Statutes, the action in regard to a continuing violation accrues at the time of the latest violation.
- (15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S. 105-381.
- (16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.
- (17) Against a public utility, electric or telephone membership corporation, or a municipality for damages or for compensation for right-of-way or use of any lands for a utility service line or lines to serve one or more customers or members unless an inverse condemnation action or proceeding is commenced within three years after the utility service line has been constructed or by October 1, 1984, whichever is later.
- (18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting as defined in G.S. 1-47(6)."

Section 3. This act becomes effective October 1, 1997, and applies to actions arising on or after that date. This act shall not affect litigation or actions pending on October 1, 1997.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law upon approval of the Governor at 3:45 p.m. on the 15th day of July, 1997.

S.B. 996

CHAPTER 298

AN ACT TO EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS CERTAIN PERSONS PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS UNDERNEATH MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21 reads as rewritten:

"§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.

(a) **Definitions.** -- For the purpose of this Article:

- (1) The word 'plumbing' is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.
- (2) The phrase 'heating, group number one' shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.
- (3) The phrase 'heating, group number two' means an air conditioning system which consists of an assemblage of interacting components producing conditioned air for comfort cooling by the lowering of temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air.
- (4) The phrase 'heating, group number three' shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.
- (5) Any person, firm or corporation, who for a valuable consideration, (i) installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for

rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

- (6) The word 'contractor' is hereby defined to be a person, firm or corporation engaged in the business of plumbing, heating, or fire sprinkler contracting.
- (7) The word 'heating' shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.
- (8) ~~The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.~~
- (9) The word 'Board' means the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.
- (10) The word 'experience' means actual and practical work directly related to the category of plumbing, heating group number one, heating group number two, heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.
- (11) The phrase 'fire sprinkler' means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, preaction systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system. Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. -- In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings. The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire

sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET).

As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience. Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout. The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof.

Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(c) To Whom Article Applies. -- The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to

engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system.

(c) Exemption. -- The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S. 143-143.9(6), if the person (i) is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or a full-time employee of either, (ii) secures a permit from the local inspections department and (iii) performs the assembly according to the State Plumbing Code.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(d1) Expired.

(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten dollar (\$10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Expired."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law upon approval of the Governor at 3:46 p.m. on the 15th day of July, 1997.

H.B. 265

CHAPTER 299

AN ACT TO MAKE STATEWIDE A LOCAL ACT ALLOWING COUNTIES TO ESTABLISH THE BOUNDARIES BETWEEN AND AMONG THEM BY THE USE OF ORTHOPHOTOGRAPHY.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 357 of the 1985 Session Laws, as amended by Chapter 710 of the 1995 Session Laws, is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of July, 1997.

Became law upon approval of the Governor at 3:48 p.m. on the 15th day of July, 1997.

S.B. 784

CHAPTER 300

AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT ACCOMPANIED BY PAYMENT.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-263 reads as rewritten:

"§ 105-263. *Extensions of time for filing a report or return.*

The Secretary may extend the time in which a person must file a report or return with the Secretary. To obtain an extension of time for filing a report or return, a person must comply with any application requirement set by the Secretary. ~~In addition, if the extension is for~~ An extension of time for filing a franchise tax return, an income tax return, or a gift tax return, the person must pay the amount of tax expected to be due with the return by the original due date of the return; an extension of time for filing one of these returns ~~return~~ does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing

~~If the extension is for a report or any return other than a franchise tax return, an income tax return, or a gift tax return, the person is not required to pay the amount of tax expected to be due with the report or return by the original due date of the report or return; an extension of time for filing a report or one of these other returns~~ return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a report or return extends the time for paying the tax expected to be due with the report or return, interest, at the rate established pursuant to G.S. 105-241.1(i), accrues on the tax due from the original due date of the report or return to the date the tax is paid."

Section 2. G.S. 105-129 reads as rewritten:

"§ 105-129. *Extension of time for filing returns.*

~~The A return required by this Article shall be is due on or before the dates specified unless the Secretary of Revenue grants an extension on or~~

~~before the due date of the return. The Secretary of Revenue for good cause may extend the time for filing any return under this Article. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due, date set in this Article. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."~~

Section 3. G.S. 105-130.17(d) reads as rewritten:

~~"(d) In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing returns. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."~~

Section 4. The Secretary of Revenue shall draw from collections under Article 4 of Chapter 105 of the General Statutes for the 1997-98 fiscal year the one-time computer programming costs of implementing this act.

Section 5. This act becomes effective January 1, 1998, and applies to returns due on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 1997.

Became law upon approval of the Governor at 3:50 p.m. on the 15th day of July, 1997.

S.B. 263

CHAPTER 301

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT SO THAT NONRESIDENT ALIENS RECEIVE COMPENSATION EQUAL TO THAT RECEIVED BY OTHER WORKERS UNDER THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-38 reads as rewritten:

"§ 97-38. Where death results proximately from compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.

If death results proximately from a compensable injury or occupational disease and within six years thereafter, or within two years of the final determination of disability, whichever is later, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars (\$30.00), per week, and burial expenses not exceeding two thousand dollars (\$2,000), to the person or persons entitled thereto as follows:

- (1) Persons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to

the exclusion of all other persons. If there be only one person wholly dependent, then that person shall receive the entire compensation payable.

- (2) If there is no person wholly dependent, then any person partially dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive a weekly payment of compensation computed as hereinabove provided, but such weekly payment shall be the same proportion of the weekly compensation provided for a whole dependent as the amount annually contributed by the deceased employee to the support of such partial dependent bears to the annual earnings of the deceased at the time of the accident.
- (3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as 'next of kin' in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing in loco parentis to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of 400 weeks from the date of the death of the employee; provided, however, after said 400-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amounts as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving wife spouse and child or children, or if there be no surviving wife spouse or child or children, to the surviving father or mother whom the employee has supported, either in whole or in part, for a period of one year prior to the date of the injury; provided, that the Commission may, in its discretion, or, upon application of the employer or insurance carrier shall commute all future installments of compensation to be paid to such aliens to their present value and payment of

~~one half of such commuted amount to such aliens shall fully acquit the employer and the insurance carrier, mother."~~

Section 2. This act is effective when it becomes law and applies to all awards for compensation under Chapter 97 of the General Statutes entered on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1997.

Became law upon approval of the Governor at 8:48 a.m. on the 16th day of July, 1997.

H.B. 533

CHAPTER 302

AN ACT TO ADD "DIVISIBLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN-KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20 reads as rewritten:

"§ 50-20. *Distribution by court of marital property upon divorce.*

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the

conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.

- (3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:

- a. As a lump sum by agreement;
- b. Over a period of time in fixed amounts by agreement;
- c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
- d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is

economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.

(4) 'Divisible property' means all real and personal property as set forth below:

- a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.
- b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Increases in marital debt and financing charges and interest related to marital debt.

(c) There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. Factors the court shall consider under this subsection are as follows:

- (1) The income, property, and liabilities of each party at the time the division of property is to become effective;
- (2) Any obligation for support arising out of a prior marriage;
- (3) The duration of the marriage and the age and physical and mental health of both parties;
- (4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;
- (5) The expectation of pension, retirement, or other deferred compensation rights, which is separate property;
- (6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;
- (7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;
- (8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
- (9) The liquid or nonliquid character of all marital property;
- (10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;
- (11) The tax consequences to each party;
- (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
- (12) Any other factor which the court finds to be just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital

property in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind. In any action in which the court determines that an equitable distribution of all or portions of the marital property in kind would be impractical, presumption is rebutted, the court in lieu of such in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the marital or separate property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(j) ~~For good cause shown, including, but not limited to, providing for the subsistence of a spouse while an action is pending, Unless good cause is~~

shown that there should not be an interim distribution, the Court court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital property property, divisible property or debt, or marital debt between the parties. The partial distribution may provide for a distributive award, award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation."

Section 2. G.S. 50-21(b) reads as rewritten:

"(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the ~~parties~~, parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties. Divisible property and divisible debt shall be valued as of the date of distribution."

Section 3. The amendments to G.S. 50-20(i1) made by this act become effective October 1, 1997, and apply to motions for interim distribution filed on or after that date but shall apply to divisible property and divisible debt only in actions for equitable distribution filed on or after October 1, 1997. The remainder of this act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 1997.

Became law upon approval of the Governor at 9:00 a.m. on the 16th day of July, 1997.

S.B. 378

CHAPTER 303

AN ACT TO AUTHORIZE ALAMANCE, CASWELL AND ROCKINGHAM COUNTIES TO CONTRACT FOR THE SUPERVISION OF WORKING PRISONERS BY EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-58 reads as rewritten:

"§ 162-58. Counties may work prisoners.

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of crimes and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county employees or by the sheriff. The board of county commissioners may also contract with units of State or local government to allow State or local government employees to supervise county prisoners. The contract shall set forth the terms and conditions under which employees of units of State and local government will supervise county prisoners. The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees or employees of another unit of State or local government supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit."

Section 2. This act applies only to Alamance, Caswell and Rockingham Counties.

Section 3. This act is effective when it becomes law and expires June 30, 1999.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law on the date it was ratified.

H.B. 1122

CHAPTER 304

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY, TO AMEND THE EVIDENCE LAWS DEALING WITH THE OPTOMETRIST/PATIENT PRIVILEGE, AND TO AUTHORIZE SUPERIOR COURT SESSIONS IN THOMASVILLE AND MOORESVILLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(g) reads as rewritten:

"(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court ~~division~~ and superior court divisions of the General

Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

- (1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report."

Section 2. G.S. 90-95 is amended by adding a new subsection to read:

"(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

- (1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.
- (3) The provisions of this subsection may be utilized by the State only if:
 - a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and
 - b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.
- (4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement."

Section 3. G.S. 8-53.9, as enacted in Section 4 of S.L. 1997-75, reads as rewritten:

"§ 8-53.9. Optometrist/patient privilege.

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric ~~services~~, services and which

information was necessary to enable that person to render professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

Section 4. G.S. 7A-42 is amended by adding a new subsection to read:

"(al) In addition to the sessions of superior court authorized by subsection (a) of this section, sessions of superior court in the following counties may be held in the additional seats of court listed by order of the Senior Resident Superior Court Judge after consultation with the Chief District Court Judge:

<u>County</u>	<u>Additional Seats of Court</u>
<u>Davidson</u>	<u>Thomasville</u>
<u>Iredell</u>	<u>Mooreville</u>

The courtrooms and related judicial facilities for these sessions of superior court may be provided by the municipality, and in such cases the facilities fee collected for the State by the clerk of superior court shall be remitted to the municipality to assist in meeting the expense of providing those facilities."

Section 5. Sections 1 and 2 of this act become effective December 1, 1997, and apply to criminal offenses committed on or after that date. Section 3 of this act is effective when this act becomes law and applies to information acquired on or after that date. The remainder of this act becomes effective July 7, 1997.

In the General Assembly read three times and ratified this the 14th day of July, 1997.

Became law upon approval of the Governor at 10:50 a.m. on the 16th day of July, 1997.

S.B. 429

CHAPTER 305

AN ACT CLARIFYING LANGUAGE CONCERNING ATTENDANCE AND PARTICIPATION OF ALTERNATES ON THE CHARLOTTE CIVIL SERVICE BOARD AND ALLOWING THE CITY OF CHARLOTTE TO DISCLOSE LIMITED PERSONNEL INFORMATION CONCERNING THE DISPOSITION OF DISCIPLINARY CHARGES AGAINST POLICE OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. The first six sentences of Section 4.61 of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, as rewritten by Chapter 623 of the 1995 Session Laws, reads as rewritten:

"Sec. 4.61. There is hereby continued a Civil Service Board for the City of Charlotte, to consist of five ~~members, members~~ and two alternates; three members and one alternate to be appointed by the City Council and two members and one alternate to be appointed by the Mayor. Each member shall serve for a term of three (3) years. In case of a vacancy on the Board, the City Council or the Mayor, as the case may be, shall fill such vacancy for the unexpired term of said member. For the purposes of establishing a quorum of the Board, any combination of Board members and alternates totaling three shall constitute a quorum. All board members and alternates shall attend regular meetings for the purposes of meeting attendance policy and familiarity with Board business and procedures. Alternates shall attend hearings when needed due to scheduling conflicts of regular Board members and shall vote only when serving in the absence of a regular Board member. Attendance at meetings and continued service on the Board shall be governed by the attendance policies established by the City Council. Vacancies resulting from a member's failure to attend the required number of meetings or hearings shall be filled as provided herein."

Section 2. Section 4.61(7)c. of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, as enacted by Chapter 449 of the 1979 Session Laws, reads as rewritten:

"c. Appeal hearings. Upon receipt of a citation for termination from either Chief or upon receipt of notice of appeal for a suspension from any Civil Service covered police officer or employee of the Fire or Police Department, or firefighter, the Board shall hold a hearing not less than 15 days nor more than 30 days from the date the notice of appeal, or the citation, is received by the Board, and shall promptly notify the officer of the hearing date. Termination hearings shall be held with a panel of five made up of any combination of available members or alternates, and suspension hearings shall be held with a panel of three made up of any combination of available members or alternates. In the event an officer desires a hearing at a date other than that set by the Board within the period set forth above, such officer may file a written request for a change of hearing date setting forth the reasons for such request, and the Chairman of the Board is empowered to approve or disapprove such request; provided, that such request must be received by the Board at least seven days prior to the date set for the hearing. For good cause, the Chairman of the Board may set a hearing date other than within the period set forth above, or may continue the hearing from time to time."

Section 3. G.S. 160A-168(c) reads as rewritten:

"(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.

- (3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.
- (8) In order to facilitate citizen review of the police disciplinary process, the city manager or the chief of police, or their designees, may release the disposition of disciplinary charges against a police officer and the facts relied upon in determining the disposition to the person alleged to have been aggrieved by the officer's actions or to that person's survivor and to members of the citizens' review board. Board members shall maintain as confidential all personnel information to which they gain access as a member of the Board. Each member of the Board shall execute and adhere to a Confidentiality Agreement that is satisfactory to the City. For purposes of this subdivision, the 'disposition of disciplinary charges' includes determinations that the charges are sustained, not sustained, unfounded, exonerated, classified as an information file, or classified as any other disciplinary disposition category subsequently adopted by the Charlotte-Mecklenburg

Police Department. In the event that the citizens' review board hears an appeal of a police disciplinary case, the disposition of the case, as defined in this subdivision, as well as the facts and circumstances of the case, may be released by the city manager or the chief of police, or their designees, to any person whose presence is necessary to the appeals hearing as determined by the chief of police or his designee.

- (9) That portion of a video or audio tape produced by a mobile video recorder (MVR) in a police department vehicle which recorded an event resulting in a citizen complaint against a police officer may be reviewed by the person alleged to have been aggrieved by the officer's actions."

Section 4. This act applies only to the City of Charlotte.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 1997.

Became law on the date it was ratified.

S.B. 667

CHAPTER 306

AN ACT TO AMEND THE CRIMINAL OFFENSE OF STALKING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-277.3 reads as rewritten:

"§ 14-277.3. Stalking.

(a) Offense. -- A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of another person without legal ~~purpose; purpose and~~

(1) ~~With with the intent to cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury; injury.~~

(2) ~~After reasonable warning or request to desist by or on behalf of the other person; and~~

(3) ~~The acts constitute a pattern of conduct over a period of time evidencing a continuity of purpose.~~

(b) Classification. -- A violation of this section is a ~~Class 2~~ Class 1 misdemeanor. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a ~~Class 1~~ Class A1 misdemeanor. A second or subsequent conviction for stalking occurring within five years of a prior conviction of the same defendant is punishable as a Class I felony."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law upon approval of the Governor at 10:45 a.m. on the 17th day of July, 1997.

AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY SPECIAL OBLIGATION BONDS AND TO MAKE OTHER CHANGES IN THE LAWS CONCERNING THESE BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159I-30, as amended by Section 20 of S.L. 1997-6, reads as rewritten:

"§ 159I-30. *Additional powers of units of local government; issuance of special obligation bonds and notes.*

(a) Authorization. -- Any unit of local government may borrow money for the purpose of financing or refinancing its cost of the acquisition or construction of a project and may issue special obligation bonds and notes, including bond anticipation notes and renewal notes, pursuant to the provisions of this section and the applicable provisions of this Chapter for such this purpose.

(b) Pledge. -- Each unit of local government may ~~agree to apply to~~ pledge for the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, ~~to may enter into covenants to take action in order to generate the revenues, provided the agreement to use such as long as the pledge of these sources to make for payments or such the covenant to generate revenues does not constitute a pledge of the unit's taxing power.~~

No agreement or covenant shall contain a nonsubstitution clause which restricts the right of a unit of local government to replace or provide a substitute for any project financed pursuant to this section.

~~The obligation sources of payment pledged by of a unit of local government with respect to the sources of payment shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the special obligation bonds or notes.~~

After the issuance of special obligation bonds or notes, the governing body of the issuing unit may identify one or more additional sources of payment for the bonds or notes and pledge these sources, as long as the pledge of the sources does not constitute a pledge of the taxing power of the unit. Each source of additional payment pledged shall be specifically identified in the proceedings of the governing body of the unit pledging the source. The governing body of the unit may not pledge an additional source of revenue pursuant to this paragraph unless the pledge is first approved by the Local Government Commission pursuant to the procedures provided in subsection (i) of this section.

~~The sources of payment so specifically identified pledged and then held or thereafter received by a unit or any fiduciary thereof shall immediately be subject to the lien of the proceedings pledge without any physical delivery of the sources or further act. The lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether the parties have notice thereof. The proceedings or any other document or action by which the lien on a source~~

of payment is created need not be filed or recorded in any manner other than as provided in this Chapter.

~~Any special obligation bonds or notes may provide additional security by the granting of a security interest in the project financed to secure payment of the purchase money provided by such bonds or notes, including a deed of trust on any real property so acquired.~~

(b1) Security Interest. -- In connection with issuing its special obligation bonds or special obligation bond anticipation notes under this Chapter, a unit of local government may grant a security interest in the project financed, or in all or some portion of the property on which the project is located, or in both. If a unit of local government determines to provide additional security as authorized by this subsection, the following conditions apply:

(1) No bond order may contain a nonsubstitution clause that restricts the right of a unit of local government to:

a. Continue to provide a service or activity; or

b. Replace or provide a substitute for any municipal purpose financed pursuant to the bond order.

(2) A bond order is subject to approval by the Commission under Article 8 of Chapter 159 of the General Statutes if it:

a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

b. Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b)(1) and (2).

The Commission approval required by this subdivision is in addition to the Commission approval required by subsection (i) of this section.

(3) No deficiency judgment may be rendered against any unit of local government in any action for breach of a bond order authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a bond order authorized by this section. This prohibition does not impair the right of the holder of a bond or note to exercise a remedy with respect to the revenues pledged to secure the bond or note, as provided in the bond order, resolution, or trust agreement under which the bond or note is authorized and secured. A unit of local government may, in its sole discretion, use tax proceeds to pay the principal of or interest or premium on bonds or notes, but shall not pledge or agree to do so.

(4) Before granting a security interest under this subsection, a unit of local government shall hold a public hearing on the proposed security interest. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(c) Payment; Call. -- Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue

shall be dated and may be made redeemable prior to maturity at the option of the unit of local government or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the unit. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner, upon terms and conditions determined by the unit.

(d) Interest. -- The interest payable by a unit on any special obligation bonds or notes may be at such rate or rates, including variable rates as authorized in this section, as may be determined by the Local Government Commission with the approval of the governing body of the unit. Such This approval may be given as the governing body of the unit may direct, including, without limitation, a certificate signed by a representative of the unit designated by the governing body of the unit.

(e) Nature of Obligation. -- Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be ~~payable secured solely from~~ by any one or more of the sources of payment authorized by this section as may be ~~specified~~ pledged in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on the bond or note are ~~payable solely from~~ secured solely by the sources of payment ~~specified~~ pledged in the bond ~~order or trust~~ order, resolution, or trust agreement under which it is authorized or secured. The following limitations apply to payment from the specified sources:

- (1) Any such use of these sources will not constitute a pledge of the unit's taxing power; and
- (2) The ~~municipality~~ unit is not obligated to pay the principal or interest or premium except from these sources.

(f) Details. -- In fixing the details of bonds or notes, the unit of local government may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof ~~provided as long as~~ as a credit facility supports ~~such~~ the bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such the bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and
- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

(g) Definitions. -- As used in this section:

- (1) 'Credit facility' means an agreement entered into by the unit with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal, or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the unit agreeing to repay the provider of such the credit facility in accordance with the terms and provisions of such the agreement; the provider of any credit facility may be located either within or without the United States of America.
- (2) 'Par formula' means any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including:
 - a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or
 - c. Such Any other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

The obligation of a unit of local government under a credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in this section.

(h) Term; Form. -- Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the unit of local government, provided except that no such maturity dates may exceed the maximum maturity periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be

attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer of such the unit whose signature, or a facsimile of whose signature, ~~shall appear~~ appears on any bonds or notes or coupons, if any, ~~shall cease to be such~~ ceases to be the officer before delivery thereof, ~~such signature or such the signature or~~ facsimile shall nevertheless be valid and sufficient for all purposes the same as if such the officer had remained in office until such the delivery. Any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time or the execution thereof ~~shall be were~~ the proper officers to sign although at the date of such the bond or note or coupon such these persons may not have been ~~such officer, the proper officers.~~ The unit may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the unit may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the unit may determine.

(i) Local Government Commission Approval. -- No bonds or notes may be issued by a unit of local government under this section unless the issuance is approved and the bonds or notes are sold by the Local Government Commission as provided in this section and the applicable provisions of this Chapter. The unit shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such the bonds or notes, which application shall contain such information and shall have attached to it such documents concerning the proposed financing as the Secretary of the Local Government Commission may require. The Commission may prescribe the form of the application. Before the Secretary accepts the application, the Secretary may require the governing body of the unit or its representatives to attend a preliminary conference, at which time the Secretary or the deputies of the Secretary may informally discuss the proposed issue and the timing of the steps taken in issuing the special obligation bonds or notes.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as either may be amended from time to time, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State or by any of its agencies or departments or by any unit of local government in the State. The Local Government Commission shall approve the issuance of such the bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this section and the applicable provisions of this Chapter. An approval of an issue shall not be regarded as an approval of

the legality of the issue in any respect. A decision by the Local Government Commission denying an application is final.

Upon the filing with the Local Government Commission of a written request of the unit requesting that its bonds or notes be sold, such the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interests of the unit and to effect the purposes of this section and the applicable provisions of this Chapter, ~~provided that such sale shall be~~ if the sale is approved by the unit.

(j) Proceeds. -- The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the unit may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

(k) Interim Documents; Replacement. -- Prior to the preparation of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such definitive bonds have been executed and are available for delivery. The unit may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(l) No Other Conditions. -- Bonds or notes may be issued under the provisions of this section and the applicable provisions of this Chapter without obtaining, except as otherwise expressly provided in this section and the applicable provisions of this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this section, the applicable provisions of this Chapter, and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such the bonds or notes.

(m) Trust. -- In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. Such The trust agreement or resolution may pledge or assign such sources of revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application

of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues ~~provided in such pledged in the trust agreement or resolution~~, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this section and of ~~such the trust agreement or resolution; provided, however, resolution~~, except that the unit may provide in ~~such the trust agreement or resolution~~ that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in ~~such the trust agreement or resolution~~, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as ~~depository~~ depository of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of ~~such the~~ bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(n) Applicable Provisions. -- The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its bonds and notes shall apply to a unit of local government and its bonds and notes issued under this section and the applicable provisions of this Chapter, ~~provided except~~ that the source or sources of revenue ~~available pledged~~ to pay bonds and notes of a unit of local government shall be limited as provided in this section.

(o) The provisions of G.S. 159I-17 relating to the Agency and its trust funds and investments shall apply to a unit of local government and its trust funds and investments, ~~provided except~~ that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

(p) The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to remedies, the Uniform Commercial Code, investment ~~eligibility and tax exemption as such~~ eligibility, and tax exemption, as they relate to the Agency's bonds and ~~notes~~ notes, shall apply to a unit of local government and its bonds and notes."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1997.

Became law upon approval of the Governor at 10:46 a.m. on the 17th day of July, 1997.

S.B. 764

CHAPTER 308

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT REGARDING EMPLOYER ACCESS TO MEDICAL INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 reads as rewritten:

"§ 97-25. *Medical treatment and supplies.*

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. The Commission shall adopt rules that govern additional methods of oral and written communications between an employer paying compensation under this Chapter and medical care providers. These rules shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1997.

Became law upon approval of the Governor at 10:48 a.m. on the 17th day of July, 1997.

S.B. 875

CHAPTER 309

AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF CERTAIN BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A STUDY OF LAND TITLE REGISTRATION PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 39-32.3 reads as rewritten:

"§ 39-32.3. *Recordation of plat showing control corners.*

Upon designating a control corner and affixing a permanent marker, said person, firm or corporation shall cause to be filed in the office of the register of deeds of the county in which the real estate development is located a map or plat showing the location of the control corner or corners and permanent marker or markers with adequate and sufficient description to enable a surveyor to locate such control corner or marker. ~~The register of deeds shall not accept for registration or record any map or plat of a real estate subdivision or development made after July 1, 1947, unless the location of such control corner or corners is shown thereon. No map or plat of a real estate subdivision or development made after July 1, 1947, shall be certified for recording pursuant to G.S. 47-30.2 unless the location of control corners is shown thereon.~~"

Section 2. G.S. 47-30 reads as rewritten:

"§ 47-30. *Plats and subdivisions; mapping requirements.*

(a) **Size Requirements.** -- All land plats presented to the register of deeds for recording in the registry of a county in North Carolina after September 30, 1991, having an outside marginal size of either 18 inches by 24 inches, 21 inches by 30 inches, or 24 inches by 36 inches, and having a minimum one and one-half inch border on the left side and a minimum one-half inch border on the other sides shall be deemed to meet the size requirements for recording under this section. Where size of land areas, or suitable scale to assure legibility require, plats may be placed on two or more sheets with appropriate match lines. Counties may specify either:

- (1) Only 18 inches by 24 inches;
- (2) A combination of 18 inches by 24 inches and 21 inches by 30 inches;
- (3) A combination of 18 inches by 24 inches and 24 inches by 36 inches; or
- (4) A combination of all three sizes.

Provided, that all registers of deeds where specific sizes other than the combination of all three sizes have been specified, shall be required to submit said size specifications to the North Carolina Association of Registers of Deeds for inclusion on a master list of all such counties. The list shall be available in each register of deeds office by October 1, 1991. For purposes of this section, the terms 'plat' and 'map' are synonymous.

(b) **Plats to Be Reproducible.** -- Each plat presented for recording shall be a reproducible plat, either original ink on polyester film (mylar), or a reproduced drawing, transparent and archival (as defined by the American National Standards Institute), and submitted in this form. The recorded plat must be such that the public may obtain legible copies. A direct or photographic copy of each recorded plat shall be placed in the plat book or plat file maintained for that purpose and properly indexed for use. In those counties in which the register has made a security copy of the plat from which legible copies can be made, the original may be returned to the person indicated on the plat.

(c) **Information Contained in Title of Plat.** -- The title of each plat shall contain the following information: property designation, name of owner (the name of owner shall be shown for indexing purposes only and is not to be construed as title certification), location to include township, county and state, the date or dates the survey was made; scale or scale ratio in words or figures and bar graph; name and address of surveyor or firm preparing the plat.

(d) **Certificate; Form.** -- There shall appear on each plat a certificate by the person under whose supervision such the survey or such plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. ~~The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds.~~ Where a plat consists of more than one sheet, only one sheet must contain the certification and all other sheets must be signed and sealed.

The certificate required above shall include the source of information for the survey and data indicating the ratio of precision of the survey before adjustments and shall be in substantially the following form:

'I,, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book, page, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book, page; that the ratio of precision as calculated is 1:; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this day of, A.D., 19

Seal or Stamp

.....
Surveyor

Registration Number'

~~The certificate of the Notary shall read as follows:~~

~~"North Carolina, County.~~

~~I, a Notary Public of the County and State aforesaid, certify that....., a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this..... day of 19.....~~

Seal or Stamp

Notary Public.....

My Commission expires

Nothing in this requirement shall prevent the recording of a map that was prepared in accordance with a previous version of G.S. 47-30 as amended, properly signed, and notarized under the statutes applicable at the time of the signing of the map. However, it shall be the responsibility of the person presenting the map to prove that the map was so prepared.

(e) Method of Computation. -- An accurate method of computation shall be used to determine the acreage and ratio of precision shown on the plat. Area by estimation is not acceptable nor is area by planimeter, area by scale, or area copied from another source, except in the case of tracts containing inaccessible sections or areas. In such case the surveyor may make use of aerial photographs or other appropriate aids to determine the acreage of such any inaccessible areas when such the areas are bounded by natural and visible monuments. In such case the methods used must be stated on the plat and all accessible areas of the tract shall remain subject to all applicable standards of this section.

(f) Plat to Contain Specific Information. -- Every plat shall contain the following specific information:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) such the index was originally determined shall be clearly indicated.
- (2) The azimuth or course and distance of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.
- (3) All plat distances shall be by horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used the grid factor shall be shown on the

face of the plat. If grid distances are used, it must be shown on the plat.

- (4) Where a boundary is formed by a curved line, the following data must be given: actual survey data from the point of curvature to the point of tangency shall be shown as standard curve data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the plat.
- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to reestablishing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
- (6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and pertinent information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract which are marked by monument or natural object shall be shown.
- (7) The names of adjacent landowners, or lot, block, parcel, subdivision designations or other legal reference where applicable, shall be shown where they could be determined by the surveyor.
- (8) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey where such the monument is within 2,000 feet of the subject property. Where the North Carolina Grid System coordinates of said the monument are on file in the North Carolina Department of Environment, Health, and Natural Resources, Office of State Planning, the coordinates of both the referenced corner and the monuments used shall be shown in X (easting) and Y (northing) coordinates on the plat. The coordinates shall be identified as based on 'NAD 83,' indicating North American Datum of 1983, or as 'NAD 27,' indicating North American Datum of 1927. The tie lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Within a previously recorded subdivision that has been tied to grid control, control monuments within the subdivision may be used in lieu of additional ties to grid control.

Within a previously recorded subdivision that has not been tied to grid control, if horizontal control monuments are available within 2,000 feet, the above requirements shall be met; but in the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of Grid Control, other appropriate natural monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

- (10) A vicinity map (location map) shall appear on the plat.
- (11) Notwithstanding any other provision contained in this section, it is the duty of the surveyor, by a certificate on the face of the plat, to certify to one of the following:
 - a. That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;
 - b. That the survey is located in such a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;
 - c. Any one of the following:
 1. That the survey is of an existing parcel or parcels of land; land and does not create a new street or change an existing street;
 2. That the survey is of an existing building or other structure, or natural feature, such as a watercourse; or
 3. That the survey is a control survey.
 - d. That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision;
 - e. That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of his or her the surveyor's professional ability as to provisions contained in (a) through (d) above.

However, if the plat contains the certificate of a surveyor as stated in a., d., or e. above, then the plat shall have, in addition to said surveyor's certificate, a certification of approval, or no approval required, as may be required by local ordinance from the appropriate government authority before the plat is presented for recordation. If the plat contains the certificate of a surveyor as stated in b. or c. above, nothing shall prevent the recordation of the plat if all other provisions have been met.

(g) Recording of Plat. -- ~~For purposes of recording, the register of deeds shall not be responsible for:~~ In certifying a plat for recording pursuant to G.S. 47-30.2, the Review Officer shall not be responsible for reviewing or certifying as to any of the following requirements of this section:

- (1) ~~The provisions of subsection (b),~~ Subsection (b) of this section as to archival; archival.
- (2) ~~The provisions of subsection (d), except for the notary certificate;~~

(3) ~~The provisions of subsection (e); or Subsection (e) of this section.~~

(4) ~~The provisions of subdivisions (2) through (9) of subsection (f). Subdivisions (1) through (10) of subsection (f) of this section.~~

A plat, when certified pursuant to G.S. 47-30.2 ~~proven and probated as provided herein for deeds and other conveyances, when and~~ presented for recording, shall be recorded in the plat book or plat file and when so recorded shall be duly indexed. Reference in any instrument hereafter executed to the record of any plat herein authorized shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.

(h) Nothing in this section shall be deemed to prevent the filing of any plat prepared by a registered land surveyor but not recorded prior to the death of the registered land surveyor. However, it is the responsibility of the person presenting the map to the Review Officer pursuant to G.S. 47-30.2 to prove that the plat was so prepared. For preservation these plats may be filed without signature, notary acknowledgement or probate, in a special plat file.

(i) Nothing in this section shall be deemed to invalidate any instrument or the title thereby conveyed making reference to any recorded plat.

(j) The provisions of this section shall not apply to boundary plats of areas annexed by municipalities nor to plats of municipal boundaries, whether or not required by law to be recorded.

(k) The provisions of this section shall apply to all counties in North Carolina. ~~Where local law is in conflict with this section, the provisions in this section shall apply. Failure of a plat to conform in all requirements of this statute shall be sufficient grounds for the register of deeds to refuse to accept the plat for recordation.~~

(l) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway corridor official maps provided in Article 2E of Chapter 136.

(m) Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor. Such a map shall either (i) have an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors or (ii) be a copy of a map, already on file in the public record, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors.

(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, 'THIS MAP IS NOT A CERTIFIED

SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.'"

Section 3. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ 47-30.2. Review Officer.

(a) The board of commissioners of each county shall, by resolution, designate by name one or more persons experienced in mapping or land records management as a Review Officer to review each map and plat required to be submitted for review before the map or plat is presented to the register of deeds for recording. Each person designated a Review Officer shall, if reasonably feasible, be certified as a property mapper pursuant to G.S. 147-54.4. A resolution designating a Review Officer shall be recorded in the county registry and indexed on the grantor index in the name of the Review Officer.

(b) The Review Officer shall review expeditiously each map or plat required to be submitted to the Officer before the map or plat is presented to the register of deeds for recording. The Review Officer shall certify the map or plat if it complies with all statutory requirements for recording.

Except as provided in subsection (c) of this section, the register of deeds shall not accept for recording any map or plat required to be submitted to the Review Officer unless the map or plat has the certification of the Review Officer affixed to it. A certification shall be in substantially the following form:

State of North Carolina
County of

I,, Review Officer of County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Date

.....
Review Officer

(c) A map or plat must be presented to the Review Officer unless the certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c."

Section 4. G.S. 136-102.6(d) reads as rewritten:

"(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new

streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of ~~such~~ the streets on the subdivision plat or map. Final acceptance by the Division of Highways of ~~such~~ the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation."

Section 5. G.S. 153A-321 reads as rewritten:

"§ 153A-321. *Planning agency.*

A county may by ordinance create or designate one or more agencies to perform the following duties:

- (1) Make studies of the county and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
- (7) Perform any other related duties that the board of commissioners may direct.

An agency created or designated pursuant to this section may include but shall not be limited to one or more of the following, ~~with any staff that the board of commissioners considers appropriate:~~ following:

- (1) A planning board or commission of any size (with not less fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;
- (2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1."

Section 6. G.S. 153A-332 reads as rewritten:

"§ 153A-332. *Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.*

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

- (1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;
- (2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;
- (3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final approval of each individual subdivision plat is to be given by:

- (1) The board of commissioners,
- (2) The board of commissioners on recommendation of a planning agency, or
- (3) A designated planning agency.

From the effective date of time that a subdivision ordinance that is adopted by the county, filed with the register of deeds of the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county, the chairman or head of the board or agency. The Review Officer, pursuant to G.S. 47-30.2, shall not certify ~~register of deeds may not file or record a~~ plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section. ~~The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether any land shown thereon is within the subdivision-regulation jurisdiction of the county."~~

Section 7. G.S. 160A-361 reads as rewritten:

"§ 160A-361. Planning agency.

Any city may by ordinance create or designate one or more agencies to perform the following duties:

- (1) Make studies of the area within its jurisdiction and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the council concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
- (7) Perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include, but shall not be limited to, one or more of the following: ~~with such staff as the council may deem appropriate; following:~~

- (1) A planning board or commission of any size (with not less fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
- (2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter."

Section 8. G.S. 160A-373 reads as rewritten:

"§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

- (1) The city council,
- (2) The city council on recommendation of a planning agency, or
- (3) A designated planning agency.

From and after the effective date of time that a subdivision ordinance that is adopted by the city, filed with the register of deeds of the county, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by the chairman or head of the agency, an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify register of deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision regulation jurisdiction of any city."

Section 9. G.S. 161-10(a)(3) reads as rewritten:

"(3) Plats. -- For each original or revised plat recorded nineteen dollars (\$19.00) twenty-one dollars (\$21.00) per sheet or page; for furnishing a certified copy of a plat three dollars (\$3.00)."

Section 10. G.S. 89C-26 is repealed.

Section 11. G.S. 130A-99 reads as rewritten:

"§ 130A-99. *Register of deeds to preserve copies of birth and death records.*

(a) The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished by the local registrar under the provisions of G.S. 130A-97, and shall make and keep a proper index of the certificates. These certificates shall be open to inspection and examination. Copies or abstracts of these certificates shall be provided to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(b) The register of deeds may remove from the records and destroy copies of birth or death certificates for persons born or dying in counties other than the county in which the office of the register of deeds is located, only after confirming that copies of the birth or death certificates removed and destroyed are maintained by the State Registrar or North Carolina State Archives."

Section 12. G.S. 132-3(a) reads as rewritten:

"(a) Prohibition. -- No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5, G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public

record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00)."

Section 13. G.S. 121-5(b) reads as rewritten:

"(b) Destruction of Records Regulated. -- No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural ~~Resources~~. Resources, except as provided in G.S. 130A-99. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authorization shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine."

Section 14. The Legislative Research Commission may study the procedures for land title registration pursuant to Chapter 43 of the General Statutes and make recommendations regarding revisions to the procedures to improve them. The Commission shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 15. Sections 1 through 10 of this act become effective October 1, 1997. The remainder of this act is effective when it becomes law. The removal and destruction by a register of deeds of any out-of-county birth certificates prior to the effective date of this act is valid, and the register of deeds is not in violation of G.S. 121-5 or G.S. 132-3.

In the General Assembly read three times and ratified this the 8th day of July, 1997.

Became law upon approval of the Governor at 10:49 a.m. on the 17th day of July, 1997.

S.B. 132

CHAPTER 310

AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 30-16 reads as rewritten:

"§ 30-16. Duty of personal representative or magistrate representative, magistrate, or clerk to assign allowance.

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a ~~magistrate~~, magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the ~~magistrate~~, magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of his death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township."

Section 2. G.S. 30-17 reads as rewritten:

"§ 30-17. *When children entitled to an allowance.*

Whenever any parent dies leaving any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled, besides its share of the estate of such deceased parent, to an allowance of two thousand dollars (\$2,000) for its support for the year next ensuing the death of such parent, less, however, the value of any articles consumed by said child since the death of said parent. Such allowance shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent, within one year after the parent's death, shall assign to every such

child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a ~~magistrate~~, magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, it shall be paid to its general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

Section 3. Part 2 of Article 4 of Chapter 30 of the General Statutes reads as rewritten:

"Part 2. Assigned by ~~Magistrate~~, Magistrate or Clerk.

"§ 30-19. *Value of property ascertained.*

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated.

"§ 30-20. *Procedure for assignment.*

Upon the application of the surviving spouse, a child by his guardian or next friend, or the personal representative of the deceased, the clerk of superior court of the county in which the deceased resided ~~shall~~ may assign the inquiry to a magistrate of the county. ~~The magistrate~~ The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into his hands.

"§ 30-21. *Report of clerk or magistrate.*

The ~~magistrate~~ clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to him. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian or next friend if the child is not living with said surviving parent; or to the child if said child is not living

with the surviving parent and has no guardian or next friend. One list shall be delivered to the personal representative. One list shall be returned by the ~~magistrate, magistrate or clerk,~~ within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

"§ 30-23. *Right of appeal.*

The personal representative, or the surviving spouse, or child by his guardian or next friend, or any creditor, legatee or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, and, within 10 days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation.

"§ 30-24. *Hearing on appeal.*

At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided ~~as other issues are directed to be, de novo. When the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the magistrate.~~

"§ 30-25. *Personal representative entitled to credit.*

Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

"§ 30-26. *When above allowance is in full.*

If the estate of a deceased be insolvent, or if his personal estate does not exceed ten thousand dollars (\$10,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and [G.S.] 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

Section 4. G.S. 7A-307(b1) reads as rewritten:

"(b1) The clerk shall assess the following miscellaneous fees:

- | | |
|---|---------|
| (1) Filing and indexing a will with no probate | |
| -- first page..... | \$ 1.00 |
| -- each additional page or fraction thereof..... | .25 |
| (2) Issuing letters to fiduciaries, per letter over five letters issued | 1.00 |
| (3) Inventory of safe deposits of a decedent, per box, per day | 15.00 |
| (4) Taking a deposition | 5.00 |
| (5) Docketing and indexing a will probated in another county in the State | |
| -- first page..... | 1.00 |
| -- each additional page or fraction thereof..... | .25 |
| (6) <u>Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a</u> | |

magistrate, and allotting the same..... 4.00"

Section 5. This act becomes effective October 1, 1997, and applies to applications for year's allowances filed on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1997.

Became law upon approval of the Governor at 10:50 a.m. on the 17th day of July, 1997.

S.B. 330

CHAPTER 311

AN ACT TO AMEND THE LAW GOVERNING SAFE-DEPOSIT BOXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-43.7 reads as rewritten:

"§ 53-43.7. *Safe-deposit boxes; unpaid rentals; procedure; escheats.*

(a) If the rental due on a safe-deposit box has not been paid for ~~one year,~~ 90 days, the lessor may send a notice by registered mail or certified mail, return receipt requested, to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail or certified mail, return receipt requested, to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed by the Treasurer or by the lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).

(c) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B.

(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under G.S. 116B-31(c); but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction.

If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to him, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer.

(e) Repealed by Session Laws 1979, 2nd Session, c. 1311, s. 5.

(f) ~~A copy of An explanation of the contractual provisions pertaining to default, together with reference to this section shall be printed on every contract for rental of a safe-deposit box.~~

Section 2. This act becomes effective September 15, 1997.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law upon approval of the Governor at 10:51 a.m. on the 17th day of July, 1997.

S.B. 714

CHAPTER 312

AN ACT TO REQUIRE HEALTH AND ACCIDENT INSURANCE POLICIES, HOSPITAL OR MEDICAL SERVICE PLANS, HMO PLANS, AND THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN TO PROVIDE COVERAGE FOR RECONSTRUCTIVE BREAST SURGERY RESULTING FROM MASTECTOMY.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-51-61. Coverage for reconstructive breast surgery resulting from mastectomy.

(a) Every policy or contract of accident and health insurance, and every preferred provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55, that is issued, renewed, or amended on or after January 1, 1998, and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(b) As used in this section, the following terms have the meanings indicated:

- (1) 'Mastectomy' means the surgical removal of all or part of a breast as a result of breast cancer or breast disease.
- (2) 'Reconstructive breast surgery' means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. 'Reconstructive breast surgery' also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast.
- (c) A policy, contract, or plan subject to this section shall not:
 - (1) Deny coverage described in subsection (a) of this section on the basis that the coverage is for cosmetic surgery;
 - (2) Deny to a woman eligibility or continued eligibility to enroll or to renew coverage under the terms of the contract, policy, or plan, solely for the purpose of avoiding the requirements of this section;
 - (3) Provide monetary payments or rebates to a woman to encourage her to accept less than the minimum protections available under this section;
 - (4) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided care to an individual participant or beneficiary in accordance with this section; or
 - (5) Provide incentives, monetary or otherwise, to an attending provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section."

Section 2. Article 65 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-65-96. Coverage for reconstructive breast surgery following mastectomy.

(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55, that is issued, renewed, or amended on or after January 1, 1998, that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(b) As used in this section, the following terms have the meanings indicated:

- (1) 'Mastectomy' means the surgical removal of all or part of a breast as a result of breast cancer or breast disease.

- (2) 'Reconstructive breast surgery' means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. 'Reconstructive breast surgery' also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast.
- (c) A policy, contract, or plan subject to this section shall not:
- (1) Deny coverage described in subsection (a) of this section on the basis that the coverage is for cosmetic surgery;
 - (2) Deny to a woman eligibility or continued eligibility to enroll or to renew coverage under the terms of the contract, policy, or plan, solely for the purpose of avoiding the requirements of this section;
 - (3) Provide monetary payments or rebates to a woman to encourage her to accept less than the minimum protections available under this section;
 - (4) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided care to an individual participant or beneficiary in accordance with this section; or
 - (5) Provide incentives, monetary or otherwise, to an attending provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section."

Section 3. Article 67 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-67-79. Coverage for reconstructive breast surgery following mastectomy.

(a) Every health care plan written by a health maintenance organization and in force, issued, renewed, or amended on or after January 1, 1998, that is subject to this Article and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery resulting from a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(b) As used in this section, the following terms have the meanings indicated:

- (1) 'Mastectomy' means the surgical removal of all or part of a breast as a result of breast cancer or breast disease.
- (2) 'Reconstructive breast surgery' means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. 'Reconstructive breast surgery' also

includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast.

(c) A policy, contract, or plan subject to this section shall not:

- (1) Deny coverage described in subsection (a) of this section on the basis that the coverage is for cosmetic surgery;
- (2) Deny to a woman eligibility or continued eligibility to enroll or to renew coverage under the terms of the contract, policy, or plan, solely for the purpose of avoiding the requirements of this section;
- (3) Provide monetary payments or rebates to a woman to encourage her to accept less than the minimum protections available under this section;
- (4) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided care to an individual participant or beneficiary in accordance with this section; or
- (5) Provide incentives, monetary or otherwise, to an attending provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section."

Section 4. Effective January 1, 1998, G.S. 58-50-155 reads as rewritten:

"§ 58-50-155. *Standard and basic health care plan coverages.*

(a) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for mammograms and pap smears at least equal to the coverage required by G.S. 58-51-57.

(a1) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer at least equal to the coverage required by G.S. 58-51-58.

(a2) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by G.S. 58-51-61.

(b) Notwithstanding G.S. 58-50-125(c), in developing and approving the plans under G.S. 58-50-125, the Committee and Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers. This section shall be effective after July 10, 1991."

Section 5. Effective January 1, 1998, G.S. 135-40.6(5) is amended by adding the following new sub-subdivision to read:

"h. Reconstructive Breast Surgery: Reconstructive breast surgery resulting from a mastectomy. The coverage shall include all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry when reconstructive surgery on a diseased breast is performed. As used in this sub-subdivision, (i) 'mastectomy' means the surgical removal of all or part of a breast as a result of breast cancer or breast disease; (ii) 'reconstructive breast surgery' means surgery performed as a result of a

mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. 'Reconstructive breast surgery' also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast. Coverage described under this sub-subdivision shall not be denied on the basis that the coverage is for cosmetic surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician."

Section 6. Nothing in this act shall apply to specified accident, specified disease, hospital indemnity, or long-term care health insurance policies.

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law upon approval of the Governor at 10:55 a.m. on the 17th day of July, 1997.

S.B. 930

CHAPTER 313

AN ACT TO ABOLISH THE MUTUAL BURIAL ASSOCIATION COMMISSION AND TO TRANSFER ITS DUTIES TO THE BOARD OF MORTUARY SCIENCE.

Whereas, mutual burial associations no longer provide an adequate funeral benefit for their members, considering the current cost of funerals, and have largely fulfilled their function; and

Whereas, many mutual burial associations have merged with or sold their assets to insurance companies, and others contemplate doing so; and

Whereas, a number of the remaining associations are not financially sound and have little likelihood of becoming so; and

Whereas, the number of associations remaining after all mergers are accomplished will be inadequate, in all likelihood, to support the activities of the Mutual Burial Association Commission; and

Whereas, as it is appropriate to provide for the merger or dissolution of associations which are not financially sound, to transfer the duties and responsibilities of the Commission for any remaining associations to the Board of Mortuary Science, and to abolish the Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1998, the authority, powers, duties, and functions vested in the North Carolina Mutual Burial Association Commission and in the Burial Association Administrator by Part 13 of Article 10 of Chapter 143B of the General Statutes are transferred to the North Carolina Board of Mortuary Science, created by Article 13A of

Chapter 90 of the General Statutes, and the North Carolina Mutual Burial Association Commission is abolished. All records, property, and unexpended balances of funds of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator are transferred in their entirety to the Board of Mortuary Science. On and after January 1, 1998, the Board of Mortuary Science shall be responsible for the administration of Part 13 of Article 10 of Chapter 143B of the General Statutes.

Section 2. Effective January 1, 1998, G.S. 143B-472 and G.S. 143B-472.1 are repealed.

Section 3. Effective January 1, 1998, G.S. 143B-472.2 reads as rewritten:

"§ 143B-472.2. ~~Duties of Commission; Board; meetings; meetings. Burial Administrator; secretary.~~

It shall be the duty of the ~~North Carolina Mutual Burial Association Commission~~ North Carolina Board of Mortuary Science to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules ~~and regulations~~ adopted pursuant to this Article; to assist the Burial Association Administrator with prosecution of violations of this Article or rules ~~and regulations~~ adopted pursuant thereto; ~~to counsel with and advise the Burial Association Administrator in the performance of his duties~~ and to protect the interest of members of mutual burial associations.

~~The North Carolina Mutual Burial Association Commission, The North Carolina Board of Mortuary Science,~~ after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The ~~Commission Board~~ is authorized and directed to adopt specific rules ~~and regulations~~ to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules ~~and regulations~~ shall, if located in North Carolina, be a funeral establishment registered ~~and permitted~~ under the provisions of ~~G.S. 90-210.17~~ G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules ~~and regulations~~ adopted by the ~~Commission Board~~ pursuant to this Article.

All rules ~~and regulations~~ heretofore adopted by the Burial Association Administrator ~~or the Mutual Burial Association Commission~~ in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or

unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the Burial Association Commission North Carolina Board of Mortuary Science as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

~~The Commission shall elect its own chairman, who shall vote only when the Commission is evenly divided.~~

~~The Commission shall hold regular meetings at least twice each year, and more often if called by the chairman in Raleigh, or such place in North Carolina as the chairman may direct. Special meetings of the Commission may also be called in Raleigh or such other place in North Carolina as they may direct, by a majority of the Commission.~~

~~The Burial Association Administrator shall serve as secretary of the Commission and shall keep minutes of all regular and special meetings.~~

~~All regular or special meetings of the Commission, unless a majority of the members of the Commission vote otherwise, shall be open to the public. All regular meetings shall be advertised in at least three newspapers having intercounty circulation in North Carolina.~~

~~Members of the Commission Board shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Commission Board shall be entitled to actual expenses when attending regular or special meetings of the Commission Board held other than in Raleigh. All expenses of the Commission Board shall be paid from funds coming to the Administrator Board pursuant to this Article. Article or appropriated for this purpose."~~

Section 4. G.S. 143B-472.3 reads as rewritten:

"§ 143B-472.3. *Requirements as to rules and bylaws.*

~~All burial associations now operating within the State of North Carolina, and all burial associations hereafter organized and operating within the State of North Carolina~~ Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be, which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which shall consist of a funeral benefit in cash or merchandise and service, with no free embalming or free ambulance service included in this benefit. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars (\$100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars (\$50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars (\$200.00)), and provided further, however,

that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars (\$100.00)) or a quadruple benefit (for a total benefit of two hundred dollars (\$200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Provided, further, that mutual burial associations organized and operating pursuant to this Article may offer for sale to its members in good standing, funeral benefits payable only in cash in excess of two hundred dollars (\$200.00), but those sales shall be subject to all applicable insurance laws of this State and shall in no manner be subject to the provisions of this Article or impair whatsoever funds heretofore or hereafter collected and held by that Association pursuant to this Article. All mutual burial association policies heretofore or hereafter sold in this State in an amount of two hundred dollars (\$200.00) or less shall continue to be administered by the Burial Association Administrator and shall be subject to all provisions of this Article.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article 6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars (\$100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars (\$100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar (\$50.00) benefit who increases his benefit from fifty dollars (\$50.00) to one hundred dollars (\$100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter set out, shall

control the increase of benefits from fifty dollars (\$50.00) to one hundred dollars (\$100.00) for any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Burial Association Administrator may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Administrator or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Burial Association Administrator or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Administrator to take charge of the books of the association and do whatever work is necessary to

bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Burial Association Administrator, it is necessary to audit the books of any burial association more than once in any calendar year, the Burial Association Commission shall have authority to assess such burial association the actual cost of any audit in excess of one per calendar year, provided that no more than one audit may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the North Carolina Mutual Burial Association Commission an annual report of its financial condition on a form furnished to it by the North Carolina Burial Association Administrator. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Burial Association Commission shall levy and collect a penalty of twenty-five dollars (\$25.00) for each day after February 15 that the report called for herein is not filed. The Commission may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Commission to the burial association of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Commission to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

Assessment Rate for Age Groups:

First to tenth birthday (\$50.00) benefit	five cents (5¢)
Tenth to thirtieth birthday (\$100.00) benefit	ten cents (10¢)
Thirtieth to fiftieth birthday	

(\$100.00) benefit	twenty cents (20¢)
Fiftieth to sixty-fifth birthday	
(\$100.00) benefit	thirty cents (30¢)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars (\$100.00) without the necessity of making application for such increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar (\$100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar (\$50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred-dollar (\$100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in

bad standing may, within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.17 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in G.S. 143B-472.18. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in G.S. 143B-472.18, do not prove sufficient at any time to yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the North Carolina Burial

Association Administrator who shall be authorized, unless the membership is increased to that point where such assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. (a) All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars (\$21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars (\$21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to twenty-one dollars (\$21.00) per member. If the reserve account shall at any time exceed twenty-one dollars (\$21.00) per member, amounts in excess of twenty-one dollars (\$21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper

of general circulation in the county in which such association has its principal place of business, or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina."

Section 5. Effective January 1, 1998, the phrases "North Carolina Mutual Burial Association Commission", "Mutual Burial Association Commission", and "Burial Association Administrator" are deleted and then replaced by the phrase "Board of Mortuary Science" wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes. The words "Commission" and "Administrator" are deleted and then replaced by the word "Board" wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes.

Section 6. Effective January 1, 1998, the pronouns "he" and "his", when referring to the Burial Association Administrator, are deleted wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes and are replaced, respectively, by the pronouns "it" and "its".

Section 7. (a) Effective January 1, 1998, references in the Session Laws to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator shall be deemed to refer to the Board of Mortuary Science. Every Session Law that refers to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator and that relates to any power, duty, function, or obligation of the Commission or the Administrator that continues in effect after the provisions of this act become effective shall be construed in a manner consistent with this act.

(b) The Revisor of Statutes may, on and after the effective date of this act, correct any reference or citation in the General Statutes that is amended by this act by deleting incorrect references and substituting correct references.

(c) The Revisor of Statutes may, on and after the first day of January 1998, delete any reference to the North Carolina Mutual Burial Association Commission or to the Burial Association Administrator in any portion of the General Statutes to which conforming amendments are not made by this act and substitute, as appropriate and consistent with this act, any of the following terms: North Carolina Board of Mortuary Science, Board of Mortuary Science, or Board.

Section 8. Every act of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator that occurred prior to the date this act becomes law or to the date that provisions of this act become effective, and which is otherwise valid, continues to be valid and effective, notwithstanding any change in name or transfer of authority, powers, duties, and functions by this act.

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law upon approval of the Governor at 10:55 a.m. on the 17th day of July, 1997.

H.B. 1006

CHAPTER 314

AN ACT TO INCREASE THE EXEMPTION FOR ANNOUNCING REQUIREMENTS OF CAPITAL IMPROVEMENT PROJECT DESIGNS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. *Exemption of certain State Capital Improvement Projects.*

State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dollars (\$100,000) are exempt from the provisions of this Article."

Section 2. This act becomes effective October 1, 1997, and only applies to State Capital Improvement Projects for which designers or consultants are selected for approval on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law upon approval of the Governor at 10:59 a.m. on the 17th day of July, 1997.

H.B. 617

CHAPTER 315

AN ACT TO CLARIFY THAT SCHOOL BUSES AND SCHOOL ACTIVITY BUSES MAY NOT COMPETE WITH THE PRIVATE SECTOR.

Whereas, public school buses are purchased with tax revenue, are insured under the State's program of self-insurance, use motor fuel that is exempt from the per gallon motor fuel excise tax, are exempt from local property taxes, and are driven by individuals who are trained at State expense; and

Whereas, public school activity buses enjoy many of these same advantages; and

Whereas, private sector businesses that provide transportation services do not enjoy any of these tax, insurance, and driver training advantages; and

Whereas, because of these differences in private sector transportation businesses and public school transportation services, it would be unfair to allow school buses and school activity buses to compete against private sector businesses in providing transportation services; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58 reads as rewritten:

"§ 66-58. *Sale of merchandise or services by governmental units.*

(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or

subdivision of any such unit, department or agency, or any individual employee or employees of any such unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to provide transportation services, or to contract with any person, firm or corporation for the operation or rendering of any such businesses or services on behalf of any such unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of operating or rendering of any of the businesses or services herein referred to is hereby prohibited.

(b) The provisions of subsection (a) of this section shall not apply to:

- (1) Counties and municipalities.
- (2) The Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Agriculture for the sale of serums, vaccines, and other like products.
- (3) The Department of Administration, except that said agency shall not exceed the authority granted in the act creating the agency.
- (4) The State hospitals for the insane.
- (5) The Department of Human Resources.
- (6) The North Carolina School for the Blind at Raleigh.
- (7) The North Carolina Schools for the Deaf.
- (8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State College, and the other schools and colleges for higher education maintained or supported by the State, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

- (9) The Department of Environment, Health, and Natural Resources, except that said Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.
- (10) Child-caring institutions or orphanages receiving State aid.
- (11) Highlands School in Macon County.
- (12) The North Carolina State Fair.
- (13) Rural electric memberships corporations.
- (13a) State Farm Operations Commission.
- (13b) The Department of Agriculture with regard to its lessees at farmers' markets operated by the Department.
- (13c) The Western North Carolina Agricultural Center.
- (14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided such leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.
- (15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for such tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies.

- (16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

Such services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

- (17) The North Carolina Global TransPark Authority or a lessee of the Authority.
 - (18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.
- (c) The provisions of subsection (a) shall not prohibit:
- (1) The sale of products of experiment stations or test farms.
 - (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.
 - (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase 'operation of endowment funds' shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.
 - (4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.

- (5) The operation of a snack bar and cafeteria in the State Legislative Building.
- (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
- (7) The operation by penal, correctional or facilities operated by the Department of Human Resources or by the State Department of Agriculture, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting such inmates or clients, and other bona fide visitors.
- (8) The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.
- (9) The operation by the public schools of school cafeterias.
- (9a) The use of a public school bus or public school activity bus for a purpose allowed under G.S. 115C-242 or the use of a public school activity bus for a purpose authorized by G.S. 115C-247.
- (10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.
- (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.
- (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
- (13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of such management program.
- (14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.
- (15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.
- (16) The performance by the Department of Transportation of dredging services for a unit of local government.
- (17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that

Article. This computer software for electronic filing of campaign finance reports shall not exceed a cost of one hundred dollars (\$100.00) to any political committee or candidate committee without the State Board of Elections first notifying in writing the Joint Legislative Commission on Governmental Operations.

(d) A department, agency or educational unit named in subsection (b) shall not perform any of the prohibited acts for or on behalf of any other department, agency or educational unit.

(e) Any person, whether employee of the State of North Carolina or not, who shall violate, or participate in the violation of this section, shall be guilty of a Class 1 misdemeanor.

(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70 not regulated by the provisions of subsection (c) hereof, shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year commencing after October 1, 1975. The Department of Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Director of the Budget.

(g) The North Carolina School of Science and Mathematics may engage in any of the activities permitted by G.S. 66-58(b)(8) and (c)(3)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

Became law upon approval of the Governor at 12:40 P.m. on the 21st day of July, 1997.

S.B. 556

CHAPTER 316

AN ACT REGARDING REQUIREMENTS FOR SPRINKLER SYSTEMS
IN FRATERNITY AND SORORITY HOUSES WITHIN THE CITIES
OF CHARLOTTE, GREENSBORO, AND RALEIGH AND WITHIN
THEIR EXTRATERRITORIAL PLANNING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 571 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies to the Cities of Charlotte, Greensboro, and Raleigh and the Towns of Chapel Hill and Carrboro only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law on the date it was ratified.

H.B. 843

CHAPTER 317

AN ACT TO INCORPORATE THE TOWN OF CEDAR ROCK SUBJECT
TO A REFERENDUM.

The General Assembly of North Carolina enacts:—

Section 1. A Charter for the Town of Cedar Rock is enacted to read:

"CHARTER OF THE TOWN OF CEDAR ROCK.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. Incorporation and Corporate Powers. The inhabitants of the Town of Cedar Rock are a body corporate and politic under the name 'Town of Cedar Rock'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Section 1.2. Map. An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of the official map shall be filed in the office of the Caldwell County Register of Deeds.

"CHAPTER II.

"TOWN BOUNDARIES.

"Section 2.1. Town Boundaries. Until modified in accordance with the law, the boundaries of the Town of Cedar Rock are as follows:

BEGINNING on an existing 3/4 inch iron pipe, said BEGINNING POINT being located South 37 degrees 40 minutes 46 seconds West 4,373.01 feet from the N.C.G.S. Control Monument 'Blue Creek', and said BEGINNING POINT having the North Carolina Grid Coordinates of North 810,320.99 feet, East 1,273,413.09 feet; thence from the POINT OF BEGINNING and with the outside boundary of 'Cedar Rock Estates' for the following calls: North 70 degrees 50 minutes 38 seconds East 238.03 feet to an existing 5/8 inch iron pipe; South 18 degrees 14 minutes 17 seconds East 156.97 feet to an existing 4 inch iron pipe in concrete; North 88 degrees 41 minutes 16 seconds East 623.03 feet to an existing 1 inch iron pipe; South 87 degrees 29 minutes 50 seconds East 627.56 feet to an existing 1/2 inch iron pipe; South 03 degrees 43 minutes 52 seconds West 1,826.93 feet to the center of a 14 inch hickory tree; North 54 degrees 38 minutes 11 seconds East 522.13 feet to an existing 1/2 inch iron pipe; South 51 degrees 00 minutes 49 seconds East 106.79 feet to an existing 1/2 inch iron pipe; South 50 degrees 30 minutes 06 seconds East 231.20 feet to an existing 1/2 inch iron pipe; South 31 degrees 16 minutes 23 seconds East 68.60 feet to an existing 1/2 inch iron pipe; South 00 degrees 15 minutes 16 seconds West 138.85 feet to an existing 1/2 inch iron pipe; South 09 degrees 24 minutes 41 seconds East 107.32 feet to an existing 1/2 inch iron pipe; South 43 degrees 30 minutes 17 seconds West 69.03 feet; South 02 degrees 15 minutes 30 seconds East 40.92 feet to an existing 1/2 inch iron pipe; South 02 degrees 40 minutes 26 seconds West 30.00 feet; South 87 degrees 23 minutes 34 seconds East 66.97 feet to a point of curve, with a curve concave to the southwest having a radius of 150.00 feet, an arc of 37.68 feet, and a chord of South 80 degrees 11 minutes 47 seconds East 37.58 feet to a point of tangency; South 73 degrees 00 minutes 00 seconds East 176.96 feet to a point of curve, with a curve concave to the northwest having a radius of 150.00, an arc of 92.48 feet, and a chord of North 89 degrees 20 minutes 14 seconds East 91.02 feet; North 71 degrees 40 minutes 28 seconds East 218.47 feet; South 09 degrees 06 minutes 50 seconds East 92.61 feet to a

point of curve, with a curve concave to the southwest having a radius of 70.00 feet, an arc of 102.26 feet, and a chord of North 61 degrees 10 minutes 06 seconds West 93.41 feet to a point of tangency; South 77 degrees 00 minutes 00 seconds West 135.17 feet; South 61 degrees 32 minutes 06 seconds West 210.35 feet to a new 1/2 iron rod in the center of a branch; thence with the branch for the following calls: North 63 degrees 01 minutes 53 seconds West 19.38 feet; North 84 degrees 52 minutes 56 seconds West 37.74 feet; South 53 degrees 44 minutes 43 seconds West 13.37 feet; South 81 degrees 12 minutes 54 seconds West 31.74 feet; South 51 degrees 07 minutes 19 seconds West 33.65 feet; South 63 degrees 58 minutes 59 seconds West 43.73 feet; North 88 degrees 07 minutes 22 seconds West 42.99 feet; South 44 degrees 55 minutes 55 seconds West 17.93 feet; South 69 degrees 07 minutes 25 seconds West 68.67 feet; North 86 degrees 52 minutes 52 seconds West 19.07 feet; South 60 degrees 37 minutes 00 seconds West 52.83 feet; South 37 degrees 58 minutes 33 seconds West 67.68 feet to a new 1/2 inch iron rod; North 71 degrees 54 minutes 38 seconds West 47.90 feet; North 87 degrees 51 minutes 11 seconds West 40.94 feet; South 65 degrees 28 minutes 08 seconds West 88.14 feet; North 76 degrees 32 minutes 31 seconds West 24.52 feet; South 25 degrees 04 minutes 23 seconds West 55.61 feet; South 38 degrees 00 minutes 34 seconds West 33.32 feet; South 52 degrees 06 minutes 23 seconds West 81.97 feet; South 50 degrees 29 minutes 02 seconds West 51.95 feet to a new 1/2 inch iron pipe in the branch; South 55 degrees 08 minutes 07 seconds East 61.08 feet; South 34 degrees 28 minutes 26 seconds East 86.12 feet; South 35 degrees 27 minutes 16 seconds East 77.74 feet; South 32 degrees 46 minutes 52 seconds East 67.55 feet; South 23 degrees 50 minutes 35 seconds East 63.51 feet; South 11 degrees 50 minutes 57 seconds East 67.12 feet; South 06 degrees 16 minutes 22 seconds East 68.09 feet; South 07 degrees 07 minutes 21 seconds West 107.78 feet to the forks of the branch; thence continuing with a branch South 12 degrees 51 minutes 27 seconds East 48.43 feet to a new 1/2 inch iron rod; thence leaving the branch South 51 degrees 07 minutes 11 seconds East 271.59 feet to a new 1/2 inch iron rod; thence South 04 degrees 44 minutes 20 seconds West 200.00 feet to a new 1/2 inch iron rod; thence North 90 degrees 00 minutes 00 seconds East 198.45 feet to a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the northeast having a radius of 50.00 feet, an arc of 117.81 feet, and a chord of South 86 degrees 20 minutes 25 seconds East 92.39 feet to a new 1/2 inch iron rod at a point of compound curve; thence with a curve concave to the northwest having a radius of 277.50 feet, an arc of 212.40 feet, and a chord of South 03 degrees 05 minutes 05 seconds West 207.25 feet to a new 1/2 inch iron rod at a point of tangency; thence South 25 degrees 01 minutes 11 seconds West 91.90 feet to a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the southeast having a radius of 127.50 feet, an arc of 37.92 feet and a chord of South 18 degrees 25 minutes 19 seconds West 37.38 feet to a point of tangency; thence South 09 degrees 54 minutes 09 seconds West 95.67 feet to a point of curve; thence with a curve concave to the southeast having a radius of 188.59 feet, an arc of 39.36 feet, and a chord of South 69 degrees 30 minutes 08 seconds West 39.29 feet to a point

of compound curve; thence with a curve concave to the southeast having a radius of 356.12 feet, an arc of 253.57 feet, and a chord of South 28 degrees 45 minutes 22 seconds West 248.25 feet to a point of tangency; thence South 08 degrees 21 minutes 27 seconds West 153.29 feet to a point of curve; thence with a curve concave to the northwest having a radius of 155.00 feet, an arc of 135.15 feet, and a chord of South 33 degrees 20 minutes 15 seconds West 130.91 feet; thence North 85 degrees 46 minutes 03 seconds West 928.26 feet to an existing 1/2 inch iron pipe; thence North 85 degrees 46 minutes 03 seconds West 300.00 feet to a new 1/2 inch iron rod; thence South 09 degrees 26 minutes 57 seconds West 1,072.65 feet to a new 1/2 inch iron rod; thence North 84 degrees 52 minutes 23 seconds West 706.50 feet to a new 3/4 inch iron point on top of a ridge; thence South 68 degrees 43 minutes 00 seconds West 648.42 feet to a new 3/4 inch iron pipe at a branch; thence South 30 degrees 04 minutes 47 seconds West 990.00 feet to a P.K. Nail set in an X marked on a large rock; thence South 38 degrees 45 minutes 00 seconds West 577.50 feet; thence South 07 degrees 45 minutes 00 seconds West 1,320.00 feet; thence North 22 degrees 00 minutes 00 seconds West 1,815.00 feet; thence North 32 degrees 30 minutes 00 seconds West 369.60 feet; thence North 58 degrees 45 minutes 00 seconds West 297.00 feet; thence North 20 degrees 30 minutes 00 seconds West 1,690.90 feet; thence North 17 degrees 00 minutes 00 seconds West 957.00 feet; thence North 05 degrees 00 minutes 00 seconds West 115.40 feet; thence North 75 degrees 32 minutes 00 seconds West 51.81 feet; thence North 00 degrees 51 minutes 00 seconds West 313.40 feet; thence North 68 degrees 10 minutes 00 seconds East 53.55 feet; thence North 00 degrees 30 minutes 00 seconds East 272.50 feet; thence North 24 degrees 00 minutes 00 seconds East 396.00 feet; thence North 29 degrees 30 minutes 00 seconds East 396.00 feet; thence North 40 degrees 00 minutes 00 seconds East 165.00 feet; thence North 38 degrees 23 minutes 00 seconds West 770.00 feet to a point in the center of N.C. Highway #18; thence with the center of the highway for the following calls: North 74 degrees 34 minutes 00 seconds East 1,143.56 feet; North 72 degrees 46 minutes 00 seconds East 280.00 feet; North 71 degrees 19 minutes 00 seconds East 400.00 feet; North 71 degrees 37 minutes 00 seconds East 600.00 feet; North 71 degrees 15 minutes 00 seconds East 700.00 feet; North 60 degrees 25 minutes 00 seconds East 130.00 feet; North 47 degrees 00 minutes 00 seconds East 130.00 feet; North 51 degrees 00 minutes 00 seconds East 130.00 feet; North 61 degrees 00 minutes 00 seconds East 130.00 feet; North 67 degrees 30 minutes 00 seconds East 130.00 feet; North 74 degrees 20 minutes 00 seconds East 180.00 feet to a point in the center of the road; thence leaving the road South 42 degrees 30 minutes 00 seconds East 120.00 feet to a point in the center of Lower Creek; thence with the center of Lower Creek for four calls: North 63 degrees 32 minutes 00 seconds East 136.00 feet; North 73 degrees 39 minutes 00 seconds East 140.00 feet; North 56 degrees 15 minutes 00 seconds East 73.00 feet; North 88 degrees 19 minutes 00 seconds East 137.00 feet; thence North 11 degrees 05 minutes 00 seconds East, leaving the creek 145.93 feet; thence South 18 degrees 30 minutes 00 seconds East 254.28 feet; thence South 18 degrees 43 minutes 00 seconds West 395.30 feet; thence South 69 degrees

08 minutes 52 seconds West 66.71 feet; thence South 61 degrees 28 minutes 34 seconds East 305.43 feet to an existing 3/4 inch iron pipe; thence North 70 degrees 40 minutes 49 seconds East 70.00 feet to the POINT OF BEGINNING containing 731.94 acres plus or minus.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Numbers of Members.** The Council shall be composed of five members to be elected by all the qualified voters of the Town for terms of four years, or until their successors are elected and qualified.

"Section 3.2. **Mayor-Council Plan.** The Town of Cedar Rock shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years. The Mayor shall be the official head of the Town government and shall preside at meetings of the Council and shall have the right to vote on all matters before the Council.

"Section 3.4. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 3.5. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 4.2. **Election of Council Members.** Elections shall be conducted by the Caldwell County Board of Elections, unless otherwise provided in accordance with G.S. 163-285. In 1997, the three persons who receive the highest number of votes shall serve four-year terms, and the two persons receiving the next highest number of votes shall serve two-year terms. The terms will continue to be staggered, with ensuing council members being elected for four-year terms.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"Section 4.4. **Special Filing Period.** The Caldwell County Board of Elections shall establish a special candidate filing period for the 1997 municipal elections."

Section 2. The provisions of G.S. 160A-63 shall not apply to the Town of Cedar Rock until after the first election of the Town Council.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Cedar Rock shall be subject to municipal taxes

levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Caldwell County a record of property in the area herein incorporated that was listed for taxes as of January 1, 1997, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act.

Section 4. The Caldwell County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor more than 120 days after this act becomes law, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Cedar Rock the question of whether or not the area shall be incorporated as the Town of Cedar Rock. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 5. In the election, the question on the ballot shall be:

"[] FOR [] AGAINST
Incorporation of the Town of Cedar Rock."

Section 6. In the election, if a majority of the votes are cast "For incorporation of the Town of Cedar Rock", Sections 1 through 3 of this act shall become effective on the date that the Caldwell County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law on the date it was ratified.

H.B. 96

CHAPTER 318

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO (1) MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO PRESERVED THEIR RIGHT TO A REFUND BY PROTESTING PAYMENT WITHIN THE TIME LIMITS SET BY G.S. 105-267 AND (2) NOTIFY AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Because the General Assembly has enacted S.L. 1997-17, prohibiting the Secretary of Revenue from collecting intangibles tax liability arising from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to a refund for one or more of those tax years to the extent the taxpayer meets all of the following requirements with respect to the applicable tax year:

- (1) The taxpayer paid intangibles tax on shares of stock for the tax year.
- (2) The taxpayer protested payment of the tax within 30 days of payment and met the other requirements of G.S. 105-267, as it

then existed, to establish and preserve the taxpayer's refund claim for the tax year.

- (3) The taxpayer's established and preserved refund claim was pending on February 21, 1996, the date the United States Supreme Court held the taxable percentage deduction in former G.S. 105-203 unconstitutional.

Section 2. The Secretary of Revenue shall make these refunds in accordance with G.S. 105-267.

Section 3. (a) The Secretary of Revenue shall, as soon as possible, mail a copy of the Wake County Superior Court's notice in the class action lawsuit Smith v. State to all intangibles taxpayers that she has identified as possibly being affected and for whom she has identified a last known mailing address. The court's notice requires immediate action by affected taxpayers. The Secretary of Revenue shall, therefore, make an extraordinary effort to assure that the notices are sent as quickly as possible.

(b) It is the intent of the General Assembly that as many affected taxpayers as possible receive actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit. The Secretary of Revenue shall supplement the mailing required by this section with circulation of the court's notice to tax professionals and media outlets throughout the State and to any other person she considers appropriate to implement the intent of this section.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1997.

Became law upon approval of the Governor at 2:40 p.m. on the 22nd day of July, 1997.

H.B. 739

CHAPTER 319

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-297.1. Prefiling of franchise agreements and amendments.

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a

condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

- (1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;
- (2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"§ 20-301. Powers of Commissioner.

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices~~. ~~practices~~ and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where they shall be hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same~~ violations.

~~(e) The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown. The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."~~

Section 3. G.S. 20-305 reads as rewritten:

"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

- (1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;
- (2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;
- (3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;
- (4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the

dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

- (5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
 - 1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
 - 2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
 - 3. Effect on the consuming public in the relevant market area;
 - 4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
 - 5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
 - 6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
 - 7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.
- c. The Commissioner ~~must shall try to~~ conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than if possible, within 180 days after a protest is filed. Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~
- d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
- e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.
- f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed

additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

- (6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than within 180 days after a petition has been filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding, filed.~~ If the termination, cancellation or nonrenewal is pursuant to G.S. 20-

305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

- a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:
 1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
 2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and
 - I. The notification stated that notice was provided of failure of performance pursuant to this section;
 - II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
 - III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.
- b. The manufacturer shall have the burden of proof under this section.
- c. Notification of Termination, Cancellation and Nonrenewal. --
 1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
 - I. In the manner described in G.S. 20-305(6)c2 below; and
 - II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

- III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
 - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
 - IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.
 - 2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
 - I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A statement of the reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
 - 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments. --
- 1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
 - I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or

damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

- II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;
 - III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and
 - IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.
2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to

mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

- f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.
- (7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.
- a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated ~~family member~~ successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.
 - b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:
 - 1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.
 - 2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.
4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.
- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.
- d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with

- this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.
- e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

- f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.
- (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.
- (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.
- (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.
- (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities

requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

- (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.
- (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.
- (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.
- (15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.
- (16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

- (17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.
- (18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.
- (19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.
- (20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.
- (21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.
- (22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.
- (23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.
- (24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.
- (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current

economic conditions and would not otherwise be justified by reasonable business considerations.

- (26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.
- (27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.
- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.
- (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.
- (30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or policy to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 1999. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program as of December 31, 1999, in accordance with the manufacturer's program or policy.

- (31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

- (32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

"§ 20-305.1. Automobile dealer warranty obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original

parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose. claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

- (1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and
- (2) Actually performed the work.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below~~, (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

- (1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.
- (2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.
- (3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.
- (4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
 - a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
 - b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.
- (5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.
- (5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing

repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

- (6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) **Damage/Repair Disclosure.** -- Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

- (1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

- (2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

- (3) For purposes of this section, 'manufacturer's suggested retail price' means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

Section 5. The amendment adding G.S. 20-305(5)(g), as set forth in Section 3 of this act, shall not apply to satellite facilities licensed before July 1, 1997. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 15th day of July, 1997.

Became law upon approval of the Governor at 8:30 a.m. on the 23rd day of July, 1997.

S.B. 248

CHAPTER 320

AN ACT TO CREATE THE BROUGHTON HOSPITAL JOINT SECURITY FORCE AND TO AMEND THE LAW ESTABLISHING THE BLACK MOUNTAIN JOINT SECURITY FORCE.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"Part 2A. Broughton Hospital Joint Security Force.

"§ 122C-430. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Broughton Hospital, North Carolina School for the Deaf, Western Regional Vocational Rehabilitation Facility, Western Carolina Center, and the surrounding grounds and land adjacent to Broughton Hospital allocated to the Department of Agriculture and Consumer Services, all in Burke County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Burke County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

Section 2. G.S. 122C-421(a) reads as rewritten:

"(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. These After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by G.S. 7A-571(a)(4) outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 8:31 a.m. on the 23rd day of July, 1997.

S.B. 648

CHAPTER 321

AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF THE TOWN OF WALLACE.

The General Assembly of North Carolina enacts:

Section 1. Section 2.3 of the Charter of the Town of Wallace, being Chapter 94 of the 1987 Session Laws, reads as rewritten:

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of ~~two~~ four years; shall be the official head of the Town government and preside at meetings of the Council; shall have the right to vote only when there is an equal division on any question or matter before the Council; and shall exercise the powers and duties conferred by law or as directed by the Council."

Section 2. This act applies beginning with the Mayor elected in 1997.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 1997.

Became law on the date it was ratified.

H.B. 653

CHAPTER 322

AN ACT TO AMEND THE CHARTER OF THE TOWN OF WENTWORTH, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 76 of the Private Laws of 1798 is amended by adding a new section to read:

"VII. The Charter of the Town of Wentworth is revised and consolidated to read:

"CHARTER OF THE TOWN OF WENTWORTH.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Sec. 1.1. The inhabitants of the Town of Wentworth are a body corporate and politic under the name 'Town of Wentworth'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town of Wentworth are as follows:

Beginning at a point four hundred feet northwest of the northern right-of-way of Sandy Cross Road; said point being four hundred feet southwest of and perpendicular to the southern right-of-way of Vernon Road; thence from said point in a generally northeasterly direction and being four hundred feet

parallel to the northern right-of-way of the Sandy Cross Road to a point in the centerline of NC Highways 65 and 87; said point being four hundred feet perpendicular to and westerly from the northern right-of-way of Sandy Cross Road Extended to the centerline of NC Highways 65 and 87; thence from said point, westerly with the centerline of NC Highways 65 and 87 about fifty feet to a point; thence from said point in a northeasterly direction about four hundred fifty feet to a point; said point being four hundred feet perpendicular to and northeasterly from the northern right-of-way of NC Highways 65 and 87 and four hundred feet perpendicular to and northwesterly from the northern right-of-way of Wentworth Street; thence from said point four hundred feet parallel to the northern right-of-way of Wentworth Street and running in a generally northeasterly direction to a point; said point being about two hundred feet east of Setliff Road and four hundred feet north of Wentworth Street; thence in a northerly direction about two thousand one hundred feet to the northeast corner of lot seven of the Setliff Glenn Subdivision (MB 28-275); said point located about eight hundred fifty feet to the east of the cul-de-sac at the end of Setliff Road; thence northeasterly about two thousand thirty feet to a point at the corner of the University Estates Subdivision; thence easterly about two thousand feet along the southeasterly boundary line of the University Estates Subdivision to a point near Cedar Lane which intersects the boundary of the existing Wentworth Fire District boundary line; thence northerly along the Wentworth Fire District line about five thousand five hundred feet to a point; said point being about four hundred feet south of the intersection of NC 1992 and Berrymore Road; thence from said point north about eight hundred sixty feet to a point; said point being four hundred feet north of and perpendicular to the northern right-of-way of Berrymore Road; thence from said point in a generally westerly direction and being four hundred feet parallel to the northern right-of-way of Berrymore Road to a point four hundred feet east of the eastern right-of-way of Ashley Loop Road; said point being four hundred feet east of and perpendicular to the eastern right-of-way of Ashley Loop Road; thence from said point in a generally northerly direction and being four hundred feet parallel to the eastern right-of-way of Ashley Loop Road to a point; said point being about four hundred thirty feet east of the intersection of Ashley Loop Road and Richardson Road; thence from said point in a westerly direction about eight hundred sixty feet to a point four hundred feet west of the the western right-of-way of Ashley Loop Road; said point being four hundred feet west of and perpendicular to the western right-of-way of Ashley Loop Road; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of Ashley Loop Road to a point four hundred feet east of its intersection with the eastern right-of-way of NC Highway 87; said point being four hundred feet east of and perpendicular to the eastern right-of-way of NC Highway 87; thence from said point in a generally northerly direction and being four hundred feet east of and parallel to the eastern right-of-way of NC Highway 87 to a point in the center of Roach Creek; said point being four hundred feet east of and perpendicular to the eastern right-of-way of NC Highway 87; thence from said point in a generally westerly direction following the centerline of Roach Creek about

eight hundred sixty feet to a point in Roach Creek; said point being four hundred feet west of and perpendicular to the western right-of-way of NC Highway 87; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of NC Highway 87 to a point four hundred feet north of its intersection with the northern right-of-way of Dillard Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Dillard Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Dillard Road to a point four hundred feet north of the end of the northern right-of-way of Dillard Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Dillard Road; thence from said point south about five hundred sixty feet to a point one hundred feet south of the end of the southern right-of-way of Dillard Road; said point being one hundred feet south of and perpendicular to the end of the right-of-way of Dillard Road; thence from said point in a generally easterly direction and being one hundred feet south of and parallel to the southern right-of-way of Dillard Road to a point four hundred feet west of the western right-of-way of NC Highway 87; said point being one hundred feet south of and perpendicular to the southern right-of-way of Dillard Road; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of NC Highway 87 to a point four hundred feet north of its intersection with the northern right-of-way of Pannel Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Pannel Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Pannel Road to a point in the center of Rock House Creek; said point being four hundred feet north of and perpendicular to the northern right-of-way of Pannel Road; thence from said point in a generally southerly direction with the center of Rock House Creek to a point four hundred feet south of its intersection with the southern right-of-way of NC Highway 65; said point being four hundred feet south of and perpendicular to the southern right-of-way of NC Highway 65; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of NC Highway 65 to a point on the northwest right-of-way of the Transcontinental gas pipeline; said point being four hundred feet southwest of and perpendicular to the southwest right-of-way of NC Highway 65; thence from said point in a generally southwesterly direction and following the northwest right-of-way of the Transcontinental gas pipeline to a point four hundred feet northeast of its intersection with the northeast right-of-way of Gunntown Road; said point being four hundred feet northeast of and perpendicular to the northeast right-of-way of Gunntown Road; thence from said point in a generally northwesterly direction and being four hundred feet northeast of and parallel to the northeasterly right-of-way of Gunntown Road to a point four hundred feet northeast of the end of the right-of-way for Gunntown Road; said point being four hundred feet northeast of and perpendicular to the northeast right-of-way of Gunntown Road; thence from said point southwest about eight hundred sixty feet to a point four hundred feet southwest of the end of

the southwest right-of-way of Gunntown Road; said point being four hundred feet southwest of and perpendicular to the end of the southwest right-of-way of Gunntown Road; thence from said point in a generally southeasterly direction and being four hundred feet southwest of and parallel to the southwest right-of-way of Gunntown Road to a point four hundred feet northwest of the northern right-of-way of Carter Road; said point being four hundred feet west of and perpendicular to Gunntown Road; thence from said point in a westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Carter Road to a point four hundred feet north of the end of the northern right-of-way of Carter Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Carter Road; thence from said point southwest about eight hundred sixty feet to a point four hundred feet south of the end of the southern right-of-way of Carter Road; said point being four hundred feet southwest of and perpendicular to the end of the southern right-of-way of Carter Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of Carter Road to a point four hundred feet west of the western right-of-way of Spring Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Carter Road; thence from said point in a generally easterly direction being four hundred feet south of and parallel to the southern right-of-way of Spring Road to a point four hundred feet west of the western right-of-way of County Home Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Spring Road; thence from said point in a generally southwesterly direction and being four hundred feet northwest of and parallel to the northwestern right-of-way of County Home Road to a point four hundred feet northwest of its intersection of the northern right-of-way of Sims Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Sims Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Sims Road to a point four hundred feet north of the end of the northern right-of-way of Sims Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Sims Road; thence from said point south about eight hundred sixty feet to a point four hundred feet south of the southern right-of-way for Sims Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Sims Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of Sims Road to a point four hundred feet northwest of the northwest right-of-way of County Home Road; said point being four hundred feet southwest of and perpendicular to the southern right-of-way of Sims Road; thence from said point in a generally southwesterly direction and being four hundred feet northwest of and parallel to the northwest right-of-way of County Home Road to a point four hundred feet northwest of the northern right-of-way of Sunset View Road; said point being four hundred feet northwest of and perpendicular to the northern right-of-way of Sunset View Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Sunset View Road to a point four hundred feet

north of the end of the northern right-of-way of Sunset View Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Sunset View Road; thence from said point about eight hundred sixty feet south to a point four hundred feet south of the southern right-of-way of Sunset View Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Sunset View Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way for Sunset View Road to a point four hundred feet west of its intersection with the western right-of-way of County Home Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Sunset View Road; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of County Home Road to a point four hundred feet north of its intersection with the northern right-of-way of Vernon Road; said point being four hundred feet west of and perpendicular to the western right-of-way of County Home Road; thence from said point about eight hundred sixty feet south to a point four hundred feet south of the southern right-of-way of Vernon Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Vernon Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of Vernon Road to the point of beginning.

"Sec. 2.2. (a) An annexation ordinance adopted by the Town of Wentworth under G.S. 160A-49(e) or G.S. 160A-37(e) shall become effective only if approved by the voters of the area to be annexed in a referendum conducted under subsection (b) of this section.

(b) The town council shall order the Rockingham County Board of Elections to call an election to determine whether or not the proposed territory shall be annexed to the town. Within 90 days after receiving such order from the town council, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

- (1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;
- (2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and
- (3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the town.

At such election the question on the ballot shall be:

"[] FOR [] AGAINST
Annexation."

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by Article 4A of Chapter 160A of the General Statutes, but not prior to the date of certification of the results of the election.

"Sec. 2.3. The Town of Wentworth may not annex any territory east of the following line:

Beginning at a point in the centerline of the Iron Works Road; said point being westerly and 400 feet perpendicular to the western right-of-way of Woolen Store Road Extended to the centerline of the Iron Works Road; thence from said point northerly about 430 feet to a point; said point being 400 feet perpendicular to and northerly from the northern right-of-way of the Iron Works Road; thence from said point in a generally northeasterly direction and being 400 feet parallel to the northern right-of-way of the Iron Works Road and Sandy Cross Road to a point in the centerline of NC Hwy. 65 and 87; said point being 400 feet perpendicular to and westerly from the northern right-of-way of Sandy Cross Road Extended to the centerline of NC Hwy. 65 and 87; thence from said point, westerly with the centerline of NC Hwy. 65 and 87 about 50 feet to a point; thence from said point in a northeasterly direction about 450 feet to a point; said point being 400 feet perpendicular to and northeasterly from the northern right-of-way of NC Hwy. 65 and 87 and 400 feet perpendicular to and northwesterly from the northern right-of-way of Wentworth Street; thence from said point 400 feet parallel to the northern right-of-way of Wentworth Street and running in a generally northeasterly direction to a point; said point being about 200 feet east of Setliff Road and 400 feet north of Wentworth Street; thence in a northerly direction about 2100 feet to the northeast corner of lot 7 of the Setliff Glenn Subdivision (MB 28-275); said point located about 850 feet east of the cul-de-sac at the end of Setliff Road; thence northeasterly about 2030 feet to a point at the corner of the University Estates Subdivision; thence easterly about 2000 feet along the southeasterly boundary line of the University Estates Subdivision to a point near Cedar Lane which intersects the boundary of the existing Wentworth Fire District boundary line; thence northerly along the Wentworth Fire District line about 5500 feet to a point; said point being about 400 feet south of the intersection of NC 1992 and Berrymore Road; thence parallel to and 400 feet from and on the southeast side of Berrymore Road to a point; said point being on NC 14 about 400 feet southeast of the intersection of Berrymore Road and NC 14.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. The governing body of the Town of Wentworth is the Town Council, which has five members.

"Sec. 3.2. The qualified voters of the entire Town elect the members of the Town Council.

"Sec. 3.3. From the effective date of this Charter until the organizational meeting of the Town Council after the 1999 municipal election, the members of the Town Council shall be Cassandra Broadnax, Evelyn Conner, George Murphy, Larry Terrell, and Dennis Paschal.

"Sec. 3.4. At the regular town election in 1999, five Town Council members shall be elected. The persons receiving the three highest numbers of votes shall be elected for four-year terms, and the two persons receiving the next highest numbers of votes shall be elected for two-year terms. In 2001 and quadrennially thereafter, two Town Council members shall be elected for four-year terms. In 2003 and quadrennially thereafter, three Town Council members shall be elected for four-year terms.

"Sec. 3.5. At the organizational meeting of the initial Town Council and at the organizational meeting after each election, the council shall elect one of its members to serve at its pleasure as Mayor.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. The Town Council shall be elected on the nonpartisan basis and the results determined by plurality in accordance with G.S. 163-292.

"Sec. 4.2. Elections shall be conducted in accordance with Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. The Town of Wentworth shall operate under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of the revival of the Charter, the citizens and property in the Town of Wentworth shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Rockingham County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 3. (a) The Rockingham County Board of Elections shall conduct an election on November 4, 1997, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of Wentworth, the question of whether or not the Charter of the Town of Wentworth should be revived and new boundaries established. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Amendment of the Charter of the Town of Wentworth and establishment of new boundaries for the town."

Section 4. In such election, if a majority of the votes cast shall be cast "FOR Amendment of the Charter of the Town of Wentworth and

establishment of new boundaries for the town", then Sections 1 and 2 of this act become effective July 1, 1998. Otherwise, those sections have no effect.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of July, 1997.

Became law on the date it was ratified.

H.B. 722

CHAPTER 323

AN ACT TO ALLOW THE CITY OF WASHINGTON TO NEGOTIATE ANNEXATION AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. The City of Washington may, by agreement, provide that certain property described in the agreement may not be annexed by the City under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to December 30, 2006.

Section 2. The City of Washington may accept, as consideration for such agreement, such agreements by the parties as the City of Washington deems just and appropriate, including, but not limited to, agreements by property owners to agree to enter into agreements which obligate the property owner to create and fill a specified number of job positions for low and moderate income employees at the property owner's plant in Beaufort County, North Carolina.

Section 3. Agreements under Section 1 of this act apply only to the following described properties:

TRACT I:

All that certain tract or parcel of land lying and being situated in Chocowinity Township, Beaufort County, North Carolina, and being more particularly described as follows:

Beginning at a point in the southern right-of-way line of NCSR 1166 (Whichards Beach Road); said point being located the following courses and distances from a concrete monument located at the southeasterly corner of the subdivision known as Harbor Estates, as shown on a plat thereof recorded in plat Cabinet A, Slide 113A in the office of the Register of Deeds of Beaufort County, North Carolina (said concrete monument also being the southwesterly corner of Tract II described below): South 35° 52' 54" East 62.93 feet; South 36° 20' 33" West 30.61 feet; and South 64° 01' 09" East 16.66 feet to a point. THENCE FROM SAID POINT OF BEGINNING BEING SO LOCATED, along and with the southern right-of-way line or Whichards Beach Road South 64° 01' 03" East 132.39 feet to a point; thence south 64° 00' 52" East 49.07 feet to a point, thence South 64° 01' 18" East 50.66 feet to a point; thence South 64° 01' 12" East 220.27 feet to a point; thence South 64° 01' 09" East 45.61 feet to a point; thence continuing along and with the southern right-of-way line of NCSR 1166 with a curve to the right in a southeastwardly direction which has a chord bearing

and distance of South 57° 55' 13" East 341.99 feet to a point; thence South 51° 52' 17" East 22.40 feet to a point; thence continuing South 51° 52' 17" East 300.00 feet to a point in the southern right-of-way line of NCSR 1166 (all previous calls being along and with the southern right-of-way line of NCSR 1166); thence leaving NCSR 1166 South 38° 00' 08" West 140.26 feet to a point; thence South 51° 52' 37" East 31.00 feet to a point; thence South 51° 52' East 99.57 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 127.20 feet to an existing concrete monument; thence North 38° 18' 41" East 102.41 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 363.45 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 723.64 feet more or less to the mean highwater line on the southern shoreline of the Pamlico River; thence along and with the mean highwater line on the southern shoreline of the Pamlico River South 03° 46' 08" East 35.33 feet to a point; thence South 31° 43' 09" West 1,725.69 feet more or less to the northern right-of-way line of NCSR 1166; thence continuing along and with the northern right-of-way line of NCSR 1166 North 51° 54' 27" West 221.81 feet to the point or place of beginning, said property containing approximately 4.84 acres. The above description is from a survey by W. C. Owen of Quible and Associates, P.C.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of July, 1997.

Became law on the date it was ratified.

H.B. 773

CHAPTER 324

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

Whereas, Bald Head Island is suitably located in a subtropic environment and blessed with temperate climates from the Atlantic Ocean and is conducive to the maintenance of permanent and retirement residences and other buildings and structures with an emphasis on environmental controls and a planned community; and

Whereas, the Village of Bald Head Island, in company with all its residents and property owners and their representatives, is fully aware of the unique nature of Bald Head Island with its combination of structures, land, and vegetation, including the oldest standing lighthouse along the coast of the State and approximately 172 acres of publicly owned prime maritime forest, that exist in a delicate ecological balance requiring careful planning, nurture, and support, as evidenced in the development plan for the island; and

Whereas, Bald Head Island is solely situated between the waters of the State by either natural or man-made structures, necessitating a unique form of transportation unlike any other in the State; and

Whereas, the Village of Bald Head Island recognizes the inordinately large numbers of nonresident property owners and values their past

contributions to the orderly and successful development of Bald Head Island; and

Whereas, while there exists no formal arrangement to continue an ongoing obligatory relationship with the nonresident property owners, the Village of Bald Head Island has long recognized such a relationship to be beneficial to all persons who have an interest in the island and the advisability of continuing to call upon nonresidents for their expertise and counsel; and

Whereas, the Village of Bald Head Island has served and will continue to serve as a model for cooperation between government and property owners and their representatives in efficient service and good planning without duplication in expenditures or unnecessary taxation; and

Whereas, Bald Head Island with its variance in seasonal population has benefited from the advantages of a municipal form of government, with the modifications and limitations as specified herein, in order to achieve its goals as a planned community; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. BALD HEAD ISLAND CHARTER

Section 1. The Charter of the Village of Bald Head Island is revised and consolidated to read as follows:

"THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Village of Bald Head Island, North Carolina, in Brunswick County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Village of Bald Head Island', hereinafter at times referred to as the 'Village'.

"Section 1.2. **Powers.** The Village shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Village of Bald Head Island specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Village and as they may be altered from time to time in accordance with law. An official map of the Village, showing the current municipal boundaries, shall be maintained permanently in the office of the Village Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Brunswick County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Village Governing Body; Composition.** The Mayor and the Village Council shall be the governing body of the Village.

"Section 2.2. **Village Council; Composition; Terms of Office.** The Council shall be composed of five members to be elected by all the qualified

voters of the Village for terms of four years, or until their successors are elected and qualified.

"Section 2.3. Mayor; Term of Office; Duties. The Mayor shall be elected by the Council from among its membership, to serve for a term of two years. The Mayor shall be the official head of the Village government and preside at meetings of the Council, shall have the right to vote on all matters before the Council, but shall not have the power to vote again in instances where there is an equal division on a question, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. Mayor Pro Tempore. The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law.

"Section 2.5. Meetings. In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. Quorum; Voting Requirements. Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. Qualifications for Office; Compensation; Vacancies. The qualifications of the Mayor and Council members shall be in accordance with general law. The Mayor and Council members shall receive no compensation for their services but may be reimbursed for ordinary and necessary expenses. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. Regular Municipal Elections. Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. Election of Council Members. The Council members serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Except for the filling of vacancies as provided for in G.S. 160A-63, two Council members shall be elected at the regular municipal election in 1997 and every four years thereafter, and three Council members shall be elected at the regular municipal election in 1999 and every four years thereafter.

"Section 3.3. Special Elections and Referenda. Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. Form of Government. The Village shall operate under the council-manager form of government, in accordance with G.S. 160A, Article 7, Part 2.

"Section 4.2. Village Manager; Appointment; Powers and Duties. The Council shall appoint a Village Manager who shall be responsible for the administration of all departments of the Village government. The Village Manager shall have all the powers and duties conferred by general

law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Section 4.3. Manager's Personnel Authority; Role of Elected Officials. As chief administrator, the Village Manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of the Village, with the exception of the Village Attorney, the Village Clerk, and any other official whose appointment or removal is specifically vested in the Council by this Charter or by general law. Neither the Council nor any of its members shall take part in the appointment or removal of officers and employees in the administrative service of the Village, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Village Attorney, the Council and its members shall deal with the administrative service solely through the Village Manager, Acting Manager, or Interim Manager, and neither the Council nor any of its members shall give any specific orders to any subordinates of the Village Manager, Acting Manager, or Interim Manager, either publicly or privately.

"Section 4.4. Village Attorney. The Village Council shall appoint a Village Attorney licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to represent the Village, advise Village officials, and perform other duties required by law or as the Council may direct.

"Section 4.5. Village Clerk. The Village Council shall appoint a Village Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Council may direct.

"Section 4.6. Tax Collector. The Village shall have a Tax Collector to collect all taxes owed to the Village, subject to general law, this Charter, and Village ordinances and to perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Village Manager. Notwithstanding the provisions of G.S. 105-349, the Village Manager is authorized to appoint and remove the Tax Collector and any deputy tax collectors.

"Section 4.7. Finance Director. The Village Manager shall appoint a Finance Officer to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or as the Council may direct, or the Village Council may, at its election, confer the duties of Finance Officer on the Village Manager as Budget Officer. The Finance Officer may be entitled 'Accountant', 'Treasurer', 'Finance Director', 'Finance Officer', or any other reasonably descriptive title.

"Section 4.8. Other Administrative Officers and Employees. The Council may authorize other positions to be filled by appointment by the Village Manager and may organize the Village government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. FINANCE AND TAXATION.

"Section 5.1. Room Occupancy and Tourism Development Tax. The authority of the Village to levy a room occupancy and tourism tax shall continue as authorized by Chapter 664 of the 1991 Session Laws, and any subsequent acts.

"ARTICLE VI. CONTRACT POST OFFICE.

"Section 6.1. **Contract Post Office.** The authority of the Village to operate a contract post office shall continue as authorized by Chapter 16 of the 1991 Session Laws, as amended by Chapter 350 of the 1991 Session Laws, and any subsequent acts.

"ARTICLE VII. NO-WAKE SPEED ZONE.

"Section 7.1. **'No-Wake' Speed Zone.** The 'no-wake' speed zone established by Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as authorized.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Motorboat Operation.** The Village may regulate the speed and operation of motorboats within the Village jurisdiction to preserve the tranquillity and environment of the Village.

"Section 8.2. **Sand Dunes.** The Village may construct, reconstruct, plant, and maintain sand dunes and regulate access to and across dunes to prevent or repair damage to dunes so as to provide protection against erosion or overwash.

"Section 8.3. **Beach Regulation.** The Village may, by ordinance, establish standards of dress, conduct, and decorum on the beaches of Bald Head Island and may otherwise regulate the use of those beaches within the Village jurisdiction.

"ARTICLE IX. PHASED DEVELOPMENT PLAN.

"Section 9.1. **Phased Development Plan.** In accordance with an act to incorporate the Village of Bald Head Island, Chapter 156 of the 1985 Session Laws, the Village Council was required to adopt by ordinance plans of development consistent with the historical land-use patterns and densities in existence on Bald Head Island at the time of ratification of the act. The Village Council, after public hearing and upon recommendation of its Planning Board, adopted a zoning ordinance for the undeveloped portions of Bald Head Island consistent with those historical land-use patterns and densities. Such zoning ordinance is based upon a 'Phased Development Plan' (as that term is defined in G.S. 160A-385.1(b)(3)), which plan was prepared by Bald Head Island Limited.

"Section 9.2. **Vested Rights.** The owners of the undeveloped portions of Bald Head Island are declared hereby to have acquired vested rights in accordance with G.S. 160A-385.1 as to the 'Phased Development Plan' entitled 'Revised June 29, 1995 STAGE 2 MASTER PLAN BALD HEAD ISLAND NORTH CAROLINA BALD HEAD ISLAND PLANNING DEPARTMENT' and approved by the State Division of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S. 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no longer. Nothing in this section shall be construed to prohibit the further granting of vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

"Section 9.3. **Alteration of Vested Rights.** As specifically authorized by G.S. 160A-385.1(e)(1)a., the vested rights herein granted may only be changed, prior to December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In addition, subject to the approval of the Village and within the limits established by the Village zoning and other land-use

ordinances, vested densities may be transferred within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this Charter so long as the density of development within the total area is not increased.

"Section 9.4. **Land-Use Regulation.** Except as herein expressly provided, nothing in this Charter shall be construed to prohibit the Village from amending its current land-use regulatory ordinances, in whole or in part, or otherwise regulating the use of land within the planning and zoning jurisdiction of the Village.

"ARTICLE X. MOTOR VEHICLE REGULATION.

"Section 10.1. **Motor Vehicle Regulation.** The Village may by ordinance exempt from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General Statutes, in whole or in part, the registration, licensing, regulation, inspection, or equipping of motor vehicles and may regulate the use, operation, possession, and ownership of motor vehicles within the jurisdiction of the Village of Bald Head Island. Additionally, notwithstanding the provisions of Chapter 20 of the General Statutes or any other statute, and in addition to those powers now or hereafter conferred by law, the Village shall have the authority to regulate motor vehicles and other means of transportation within the jurisdiction of the Village, including the following:

(1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-4.01(49).

(2) Regulation of all electrically powered vehicles or vehicles powered by fossil fuel or internal combustion engines.

(3) Regulation of the size, weight, lighting, safety standards, and engine or motor size or power characteristics of all vehicles or other means of transportation within the jurisdiction of the Village.

"Section 10.2. **Street Regulation.** In order to establish and preserve the unique character and aesthetics of Bald Head Island, the Village may adopt, by ordinance, such standards for the establishment and maintenance of streets and roads within the jurisdiction of the Village as it deems appropriate. The streets and roads within the jurisdiction of the Village shall not be under the authority of the Department of Transportation. The provisions of Articles 2 and 2A of Chapter 136 of the General Statutes shall not apply within the jurisdiction of the Village. The Village shall be exempt from the provisions of G.S. 136-66.2.

"ARTICLE XI. SEA TURTLE SANCTUARY.

"Section 11.1. **Sea Turtle Sanctuary.** The Village of Bald Head Island may create and establish a sea turtle sanctuary within the areas of the Village limits above the mean low watermark, to include the foreshore. Any ordinances adopted by the Village to regulate activities within the sea turtle sanctuary that may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinances adopted by the Village may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles in G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Village of Bald Head Island."

Section 2. The purpose of Part I of this act is to revise the Charter of the Village of Bald Head Island and to consolidate certain acts concerning the property, affairs, and government of the Village. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into Part I of this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The provisions of Chapter 156 of the 1985 Session Laws, except for the provisions of Section 4-3(f), (g), and (h), having served the purposes for which they were enacted or having been consolidated into Part I of this act, are expressly repealed. The provisions of Section 4-3f., g., and h. of Chapter 156 of the 1985 Session Laws are expressly not repealed and shall continue as authorized.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of Section 1 of this Charter.

Section 6. Part I of this act does not affect any rights or interests which arose under any provisions repealed by Part I of this act.

Section 7. All existing ordinances, resolutions, and other provisions of the Village of Bald Head Island not inconsistent with the provisions of Part I of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the Village or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in Part I of this act to a particular provision of the general statutes, and that provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended general statute or to the general statute that most clearly corresponds to the statutory provision that is superseded or recodified.

Section 10. The Brunswick County Board of Elections shall establish a special candidate filing period for the 1997 municipal election for the Village of Bald Head Island.

Section 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of July, 1997.

Became law on the date it was ratified.

H.B. 88

CHAPTER 325

AN ACT TO GRANT SUBPOENA POWER TO THE STATE BOARD OF EDUCATION IN CASES INVOLVING THE SUSPENSION OR REVOCATION OF CERTIFICATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. In addition, the State Board of Education may revoke or refuse to renew a teacher's certificate when:

- (1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37; and
- (2) The assistance team assigned to that school under G.S. 115C-105.38 makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1997.

Became law upon approval of the Governor at 10:45 a.m. on the 25th day of July, 1997.

H.B. 1061

CHAPTER 326

AN ACT TO ESTABLISH LIFETIME SPORTSMAN LICENSES FOR CERTAIN DISABLED RESIDENTS AND DISABLED VETERANS AND TO PROHIBIT THE UNLAWFUL USE OF FACILITIES PROVIDED FOR DISABLED SPORTSMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1D(b) reads as rewritten:

"(b) Lifetime Sportsman Licenses. Lifetime sportsman licenses are valid for the lifetime of the holders and entitle the holders to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

- (1) Infant Lifetime Sportsman License -- \$200.00. This license shall be issued only to an individual under one year of age.
- (2) Youth Lifetime Sportsman License -- \$350.00. This license shall be issued only to an individual under 12 years of age.
- (3) Adult Resident Lifetime Sportsman License -- \$500.00. This license shall be issued only to an individual resident of the State.
- (4) Nonresident Lifetime Sportsman License -- \$1,000. this license shall be issued only to an individual nonresident of the State.
- (5) Age 70 Resident Lifetime Sportsman License -- \$10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.
- (6) Disabled Resident Sportsman License -- \$100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid

for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed."

Section 2. G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b) (3) are repealed.

Section 3. G.S. 113-270.1C(b) is amended by adding a new subdivision to read:

"(4) Lifetime Combination Hunting and Fishing License for Disabled Residents -- \$10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed."

Section 4. G.S. 143-250.1(c) is amended by adding a new subdivision to read:

"(5a) The proceeds from the sale of lifetime combination hunting and fishing licenses for disabled residents pursuant to G.S. 113-270.1C(b)(4);"

Section 5. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-297. Unlawful use of facilities provided for disabled sportsman.

Any person who knowingly uses facilities or participates in activities provided by the Wildlife Resources Commission for disabled sportsmen, when that person does not meet the qualifications for use of those facilities or participation in those activities, is guilty of a Class 3 misdemeanor."

Section 6. Section 5 of this act becomes effective December 1, 1997. The remainder of this act becomes effective October 1, 1997. All lifetime combination hunting and fishing licenses issued under G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b)(3) prior to that date shall remain valid for the uses for which they were issued.

In the General Assembly read three times and ratified this the 14th day of July, 1997.

Became law upon approval of the Governor at 10:46 a.m. on the 25th day of July, 1997.

S.B. 894

CHAPTER 327

AN ACT TO PROVIDE THAT DEALERS HAVE TEN WORKING DAYS TO SEND MOTOR VEHICLE FEES TO THE STATE.

The General Assembly of North Carolina enacts:

WELL AS THE DISTRIBUTIONS TO BENEFICIARIES OF THAT FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(b) is amended by adding two new subdivisions to read:

"(12) Interest and other investment earnings on amounts contributed to the Parental Savings Trust Fund of the State Education Assistance Authority for the payment of room or board at an eligible educational institution, as defined in section 135(c)(3) of the Code.

(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

In the General Assembly read three times and ratified this the 14th day of July, 1997.

Became law upon approval of the Governor at 10:52 a.m. on the 25th day of July, 1997.

S.B. 921

CHAPTER 329

AN ACT TO EXEMPT LICENSED NONPROFIT CONTINUING CARE FACILITIES FROM THE LICENSURE REQUIREMENTS OF THE NORTH CAROLINA CHARITABLE SOLICITATIONS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131F-3 reads as rewritten:

"§ 131F-3. *Exemptions.*

The following are exempt from the provisions of this Chapter:

- (1) Any person who solicits charitable contributions for a religious institution.
- (2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.
- (3) Any person who receives less than twenty-five thousand dollars (\$25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.
- (4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body, and any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, and any foundation or department having an established identity with any of these educational institutions.
- (5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any

foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.

- (6) Any noncommercial radio or television station.
- (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).
- (8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.
- (9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.
- (10) A volunteer fire department, rescue squad, or emergency medical service.
- (11) A Young Men's Christian Association or a Young Women's Christian Association.
- (12) A nonprofit continuing care facility licensed under Article 64 of Chapter 58 of the General Statutes."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1997.

Became law upon approval of the Governor at 10:53 a.m. on the 25th day of July, 1997.

H.B. 484

CHAPTER 330

AN ACT TO PROVIDE FOR THE RECORDATION OF NOTICES OF OPEN DUMPS IN THE OFFICE OF THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-29.1 reads as rewritten:

"§ 47-29.1. *Recordation of waste disposal on land.*

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of land clearing and inert debris in a landfill with a disposal area of ½ acre or less pursuant to G.S. 130A-301.1 shall be recorded as provided in G.S. 130A-301.1(c). A Notice of Open Dump shall be recorded as provided in G.S. 130A-301(f). The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8."

Section 2. G.S. 130A-301 reads as rewritten:

"§ 130A-301. *Recordation of permits for disposal of waste on land- land and Notice of Open Dump.*

(a) Whenever the Department approves a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land, the owner of the facility shall be granted both an original permit and a copy certified by the Secretary. The permit shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance.

(b) The owner of a facility granted a permit for a sanitary landfill or a facility for the disposal of hazardous waste on land shall file the certified copy of the permit in the register of deeds' office office of the register of deeds in the county or counties in which the land is located.

(c) The register of deeds shall record the certified copy of the permit and index it in the grantor index under the name of the owner of the land.

(d) The permit shall not be effective unless the certified copy is filed as required under subsection ~~(b)~~ (b) of this section.

(e) When a sanitary landfill or a facility for the disposal of hazardous waste on land is sold, leased, conveyed or transferred, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a sanitary landfill or a disposal site for hazardous waste and a reference by book and page to the recordation of the permit.

(f) When the Department determines that an open dump exists, the Department shall notify the owner or operator of the open dump of applicable requirements to take remedial action at the site of the open dump to protect public health and the environment. If the owner or operator fails to take remedial action, the Department may record a Notice of Open Dump in the office of the register of deeds in the county or counties where the open dump is located. Not less than 30 days before recording the Notice of Open Dump, the Department shall notify the owner or operator of its intention to file a Notice of Open Dump. The Department may notify the owner or operator of its intention to file a Notice of Open Dump at the time it notifies the owner or operator of applicable requirements to take remedial action. An owner or operator may challenge a decision of the Department to file a Notice of Open Dump by filing a contested case under Article 3 of Chapter 150B of the General Statutes. If an owner or operator challenges a decision of the Department to file a Notice of Open Dump, the Department shall not file the Notice of Open Dump until the contested case is resolved, but may file a notice of pending litigation under Article 11 of Chapter 1 of the General Statutes. This power is additional and supplemental to any other power granted to the Department. This subsection does not repeal or supersede any statute or rule requiring or authorizing record notice by the owner.

- (1) The Department shall file the Notice of Open Dump in the office of the register of deeds in substantially the following form:

'NOTICE OF OPEN DUMP

The Division of Waste Management of the North Carolina Department of Environment, Health, and Natural Resources has determined that an open dump exists on the property described below. The Department provides the following information regarding this open dump as a public service. This Notice is filed pursuant to G.S. 130A-301(f).

Name(s) of the record owner(s):

Description of the real property:

Description of the particular area where the open dump is located:

Any person who has questions regarding this Notice should contact the Division of Waste Management of the North Carolina Department of Environment, Health, and Natural Resources. The contact person for this Notice is: _____ who may be reached by telephone at _____ or by mail at _____.
Requests for inspection and copying of public records regarding this open dump may be directed to _____ who may be reached by telephone at _____ or by mail at _____.

Secretary of Environment, Health, and Natural Resources

by _____ Date: _____.

- (2) The description of the particular area where the open dump is located shall be based on the best information available to the Department but need not be a survey plat that meets the requirements of G.S. 47-30 unless a survey plat that meets those requirements and that is approved by the Department is furnished by the owner or operator.
- (3) The register of deeds shall record the Notice of Open Dump and index it in the grantor index under the name of the record owner or owners. After recording the Notice of Open Dump, the register of deeds shall return the Notice of Open Dump to the Department in care of the person listed as the contact person in the Notice of Open Dump.
- (4) When the owner removes all solid waste from the open dump site to the satisfaction of the Department, the Department shall file a Cancellation of the Notice of Open Dump. The Cancellation shall be in a form similar to the original Notice of Open Dump and shall state that all the solid waste that constituted the open dump has been removed to the satisfaction of the Department. The Cancellation shall be filed and indexed in the same manner as the original Notice of Open Dump."

Section 3. G.S. 130A-290(20) reads as rewritten:

"(20) 'Open dump' means a any facility or site where solid waste disposal site which is disposed of that is not a sanitary landfill, landfill and that is not a facility for the disposal of hazardous waste."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1997.

Became law upon approval of the Governor at 10:49 a.m. on the 25th day of July, 1997.

AN ACT TO EXEMPT CERTAIN GOVERNMENTAL ENTITIES FROM
STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-465 reads as rewritten:

"§ 143B-465. *Purchase of supplies, material and equipment and building contracts.*

(a) All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority.

(b) All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.

(c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State Ports Authority finds that the delivery of a particular port facility must be expedited for good cause, the Authority shall be exempt from the following statutes, and rules implementing those statutes, to the extent necessary to expedite delivery: G.S. 133-1.1(g), G.S. 143-128(a) through (e), G.S. 143-132, and G.S. 143-135.26. Prior to exercising an exemption authorized under this subsection, the North Carolina State Ports Authority, through its Executive Director, shall give notice in writing of the Authority's intent to exercise the exemption to the Secretary of Administration. The notice shall contain, at a minimum, the following information: (i) the specific statutory requirement or requirements from which the Authority intends to exercise an exemption; (ii) the reason the exemption is necessary to expedite delivery of a port facility; and (iii) the way the Authority anticipates the exemption will expedite the delivery of a port facility. The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contracts exceeding two hundred fifty thousand dollars (\$250,000) to which an exemption authorized by this subsection is applied."

Section 2. G.S. 113-315.36 reads as rewritten:

"§ 113-315.36. *Purchase of supplies, ~~material and equipment.~~ material, equipment, and building contracts.*

~~All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina Seafood Industrial Park Authority.~~

The following general laws, to the extent provided below, do not apply to the North Carolina Seafood Industrial Park Authority:

- (1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies, materials, equipment, and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State

officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

- (2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.
- (3) G.S. 143-341(3) shall not apply to the plans and specifications for construction or renovation authorized by the North Carolina Seafood Industrial Park Authority.

Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by Articles 3 and 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars (\$250,000) to which this exemption is applied."

Section 3. The County of Davie may contract for the design and construction of jail and law enforcement facilities without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Section 4. This act is effective when it becomes law and expires July 1, 1999.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 10:54 a.m. on the 25th day of July, 1997.

S.B. 234

CHAPTER 332

AN ACT TO INCREASE THE STATUTORY AMOUNTS THAT DETERMINE THE ASSESSMENT OF SAFE DRIVER INCENTIVE PLAN POINTS AND TO PROVIDE FOR A GRADUATED INSURANCE POINT AND SURCHARGE SCHEDULE FOR BODILY INJURY CAUSED IN AUTOMOBILE ACCIDENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-36-75(a) reads as rewritten:

"(a) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may provide for separate surcharges for major, intermediate, and minor accidents. A 'major accident' is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of ~~two thousand dollars (\$2,000)~~ two thousand five hundred dollars (\$2,500) or more. An 'intermediate accident' is an at-fault accident that results in only property damage of more than ~~one thousand dollars (\$1,000)~~ one thousand five hundred dollars (\$1,500) but less than ~~two thousand dollars (\$2,000)~~ two thousand five hundred dollars (\$2,500). A 'minor accident' is an at-fault accident that results in only property damage of ~~one thousand dollars~~

(\$1,000) one thousand five hundred dollars (\$1,500) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge. The Bureau shall assign varying Safe Driver Incentive Plan point values and surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the injury, provided that the point value and surcharge assigned for the most severe bodily injury shall not exceed the point value and surcharge assigned to a major accident involving only property damage."

Section 2. The North Carolina Rate Bureau shall amend the subclassification plan to implement the provisions of this act no later than October 1, 1997. The amendments to the plan become effective January 1, 1998, and apply to at-fault accidents that occur on or after that date. With respect to any at-fault accidents occurring prior to January 1, 1998, the surcharge and period for which the surcharge is applied and collected shall be determined by the subclassification plan in effect at the time the at-fault accident occurred.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 10:55 a.m. on the 25th day of July, 1997.

S.B. 251

CHAPTER 333

AN ACT TO MODIFY THE COMMON LAW TO PERMIT THE CREATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS BY A LANDOWNER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 39 of the General Statutes is amended by adding a new section to read:

"§ 39-6.4. Creation of easements, restrictions, and conditions.

(a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

(b) Subsection (a) of this section shall not affect the application of the doctrine of merger after the severance and subsequent reunification of title to all of the benefited or burdened real property or interests therein."

Section 2. This act is effective October 1, 1997, and applies to all easements, restrictions, conditions, or interests created, granted, reserved, or declared before, on, or after the effective date of this act but shall not apply to any litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date, nor shall this act apply to any litigation in which final judgment has been rendered or to any instrument directly or indirectly involved in any litigation in which final judgment has been rendered on or before that date.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 10:56 a.m. on the 25th day of July, 1997.

S.B. 562

CHAPTER 334

AN ACT TO INCREASE THE AMOUNT OF THE PROCESSING FEE
CHARGED FOR RETURNED CHECKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-3-506 reads as rewritten:

"§ 25-3-506. *Collection of processing fee for returned checks.*

A person who accepts a check in payment for goods or services may charge and collect a processing fee, not to exceed ~~twenty dollars (\$20.00)~~, twenty-five dollars (\$25.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank if at the time the consumer presented the check to the person, a sign:

- (1) Was conspicuously posted on or in the immediate vicinity of the cash register or other place where the check is received;
- (2) Was in plain view of anyone paying for goods or services by check;
- (3) Was no smaller than 8 by 11 inches; and
- (4) Stated the amount of the fee that would be charged for returned checks.

When the drawer sends a check by mail for payment of a debt and the check is dishonored and returned, the processing fee may be collected if the drawer was given prior written notice that a fee would be charged for returned checks. Any document that clearly and conspicuously states the amount of the fee that will be charged for returned checks and is delivered to the drawer or his agent, or is mailed first-class mail to the drawer at his last known address as part of any document requesting payment of a debt satisfies this notice requirement for that payment only.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee."

Section 2. This act becomes effective October 1, 1997, and applies to checks written on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 10:57 a.m. on the 25th day of July, 1997.

S.B. 1059

CHAPTER 335

AN ACT TO ENSURE THAT DEALER PLATES ARE USED ONLY ON
VEHICLES DRIVEN FOR A BUSINESS PURPOSE OF THE

DEALERSHIP AND TO LIMIT THE NUMBER OF TRANSPORTER PLATES THAT MAY BE ISSUED TO A DEALER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79(d) reads as rewritten:

"(d) Restrictions on Use. -- A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

- (1) Is part of the inventory of the dealer.
- (2) Is not consigned to the dealer.
- (3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.
- (4) Is not used by the dealer in another business in which the dealer is engaged.
- (5) Is driven on a highway by a person who ~~meets the following requirements and who~~ carries a copy of the registration card for the dealer plates issued to the dealer ~~and any demonstration permit issued to that person while driving the motor vehicle;~~ vehicle and who meets one of the following descriptions:

- ~~a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.~~
- ~~b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.~~
- a. Has a demonstration permit to test-drive the motor vehicle and carries the demonstration permit while driving the motor vehicle.
- b. Is an officer or sales representative of the dealer and is driving the vehicle for a business purpose of the dealer.
- c. Is an employee of the dealer and is driving the vehicle in the course of employment.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection."

Section 2. G.S. 20-79.2 reads as rewritten:

"§ 20-79.2. *Transporter plates.*

(a) Who Can Get a Plate. -- A person engaged in a business requiring the limited operation of a motor vehicle for any of the following purposes may obtain a transporter plate authorizing the movement of the vehicle for the specific purpose:

- (1) To facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser.
- (2) To repossess a motor vehicle.

- (3) To pick up a motor vehicle that is to be repaired or otherwise prepared for sale by a dealer, to road-test the vehicle, if it is repaired, within a 10-mile radius of the place where it is repaired, and to deliver the vehicle to the dealer.
- (4) To move a motor vehicle that is owned by the business and is a replaced vehicle offered for sale.
- (5) To take a motor vehicle either to or from a motor vehicle auction where the vehicle will be or was offered for sale.
- (6) To road-test a repaired truck whose GVWR is at least 15,000 pounds when the test is performed within a 10-mile radius of the place where the truck was repaired and the truck is owned by a person who has a fleet of at least five trucks whose GVWRs are at least 15,000 pounds and who maintains the place where the truck was repaired.
- (7) To move a mobile office, a mobile classroom, or a mobile or manufactured home.
- (8) To drive a motor vehicle that is at least 25 years old to and from a parade or another public event and to drive the motor vehicle in that event. A person who owns a motor vehicle that is at least 25 years old is considered to be in the business of collecting those vehicles.
- (9) To drive a motor vehicle that is part of the inventory of a dealer to and from a motor vehicle trade show or exhibition or to, during, and from a parade in which the motor vehicle is used.
- (10) To drive special mobile equipment in any of the following circumstances:
 - a. From the manufacturer of the equipment to a facility of a dealer.
 - b. From one facility of a dealer to another facility of a dealer.
 - c. From a dealer to the person who buys the equipment from the dealer.

(b) How to Get a Plate. -- A person may obtain a transporter plate by filing an application with the Division and paying the required fee. An application must be on a form provided by the Division and contain the information required by the Division. The fee for a transporter plate is one-half the fee set in G.S. 20-87(5) for a passenger motor vehicle of not more than 15 passengers.

(b1) Number of Plates. -- The total number of transporter and dealer plates issued to a dealer may not exceed the number of dealer plates that can be issued to the dealer under G.S. 20-79(b). This restriction does not apply to a person who is not a dealer. Transporter plates issued to a dealer shall bear the words 'Dealer-Transporter.'

(b2) Sanctions. -- The following sanctions apply when a motor vehicle displaying a 'Dealer-Transporter' license plate is driven in violation of the restrictions on the use of the plate:

- (1) The individual driving the motor vehicle is responsible for an infraction and is subject to a penalty of fifty dollars (\$50.00).
- (2) The dealer to whom the plate is issued is subject to a civil penalty imposed by the Division of two hundred dollars (\$200.00).

- (3) The Division may rescind all dealer license plates issued to the dealer whose plate was displayed on the motor vehicle.

A penalty imposed under subdivision (1) of this subsection is payable to the county where the infraction occurred, as required by G.S. 14-3.1. A civil penalty imposed under subdivision (2) of this subsection shall be credited to the Highway Fund as nontax revenue.

(c) Form, Duration, and Transfer. -- A transporter plate is a type of commercial license plate. A transporter plate issued to a dealer is issued on a fiscal-year basis. A transporter plate issued to a person who is not a dealer is issued on a calendar-year basis. During the calendar year for which it is issued, a person may transfer a transporter plate from one vehicle to another as long as the vehicle is driven only for a purpose authorized by subsection (a) of this section. The Division may rescind a transporter plate that is displayed on a motor vehicle driven for a purpose that is not authorized by subsection (a) of this section."

Section 3. Notwithstanding G.S. 20-79.2(c), as amended by this act, a transporter plate issued to a dealer for the 1997 calendar year expires June 30, 1998.

Section 4. This act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 10:59 a.m. on the 25th day of July, 1997.

H.B. 646

CHAPTER 336

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO
ESTABLISH A PRODUCTION MONEY SECURITY INTEREST IN
CROPS THAT HAS PRIORITY OVER OTHER SECURITY
INTERESTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-312 reads as rewritten:

"§ 25-9-312. *Priorities among conflicting security interests in the same collateral.*

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on consignments.

- (2) (a) A perfected security interest in crops for new value given to enable the debtor to purchase agricultural supplies to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier any perfected security interest in those crops, to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had

knowledge of the earlier security interest. Priority between conflicting security interests in crops for new value given to enable the debtor to purchase agricultural supplies not more than three months before the crops became growing crops is governed by subdivision (5) of this section.

- (b) Within five days of perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies, the holder of the security interest shall notify in writing by certified mail, addressee only, the holder of the conflicting security interest that the person giving the notice has or expects to acquire a security interest in the crops of the debtor. The notice shall identify the debtor, describe the type of crops, state the year or years in which the crops will be grown, and describe the land where the crops are growing or to be grown.
 - (c) Creating or perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security arrangement of any kind or nature where the collateral is real or personal property.
 - (d) As used in this subdivision, 'agricultural supplies' includes agricultural seeds as defined in G.S. 106-277.2, soil additives as defined in G.S. 106-50.31, fertilizer materials as defined in G.S. 106-657, liming materials as defined in G.S. 106-92.3, pesticides as defined in G.S. 106-65.24, herbicides as defined in G.S. 143-460, and curing oil and gas.
- (3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:
- (a) ~~the~~ The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
 - (b) ~~the~~ The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of G.S. 25-9-304); and
 - (c) ~~the~~ The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
 - (d) ~~the~~ The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.
- (4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its

proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 2. This act becomes effective October 1, 1997, and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 11:00 a.m. on the 25th day of July, 1997.

H.B. 1059

CHAPTER 337

AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO
ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN
WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF
URBAN-LEVEL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-120.2. Permits for urban waterfront redevelopment in historically urban areas.

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by rules, standards, or limitations prescribed by the Commission,

or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.

(b) Notwithstanding G.S. 113A-120(a), the Commission shall grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:

- (1) The land is waterfront property located in a municipality.
- (2) The land has a history of urban-level development as evidenced by any of the following:
 - a. The land is a historic place that is listed, or has been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966.
 - b. The land is a historical, archaeological, and other site owned, managed, or assisted by the State of North Carolina pursuant to Chapter 121 of the General Statutes.
 - c. The land has a central business district zoning classification, or any other classification that may be designated as acceptable by the Commission.
- (3) The proposed development is sponsored in part or in whole by the local jurisdiction in which the development would be located for the purpose of significantly increasing public access consistent with the Coastal Area Management guidelines.
- (4) The municipality in which the activity would occur has determined that the development will not have a significant adverse impact on the environment.
- (5) The development as requested is consistent with a local urban waterfront development plan, local development regulations, public access plans, and other applicable local authority.

(c) Except as otherwise provided by this section, all other provisions of this Article apply to a permit applied for under this section, including the provisions of G.S. 113A-120(b1) and (b2)."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this ~~section~~, section or of G.S. 113A-120.2, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and State laws, regulations, and rules for the protection of the environment."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

Became law upon approval of the Governor at 11:15 a.m. on the 25th day of July, 1997.

S.B. 943

CHAPTER 338**AN ACT TO ENACT THE MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS ACT.**

The General Assembly of North Carolina enacts:

Section 1. Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7. Medical Assistance Provider False Claims Act.

"§ 108A-70.10. Short title.

This Part may be cited as the Medical Assistance Provider False Claims Act.

"§ 108A-70.11. Definitions.

Definitions. -- As used in this Part:

- (1) 'Attorney General' means the Attorney General or any Deputy, Assistant, or Associate Attorney General.
- (2) 'Claim' means an application for payment or approval or for use in determining entitlement to payment presented to the Medical Assistance Program in any form, including written, electronic, or magnetic, which identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.
- (3) 'Damages' means the difference between what the Medical Assistance Program paid a provider and the amount it would have paid the provider in the absence of a violation of this section and may be established by statistical sampling methods.
- (4) 'Knowingly' means that a provider, with respect to the information:
 - a. Has actual knowledge of the information;
 - b. Acts in deliberate ignorance of the truth or falsity of the information; or
 - c. Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.
- (5) 'Medical Assistance Program' means the North Carolina Division of Medical Assistance and its fiscal agent.

"§ 108A-70.12. Liability for certain acts; damages; effect of repayment.

(a) Liability for Certain Acts. -- It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

- (1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or
- (2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation.

(b) Damages. --

- (1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) plus three times the amount of damages which the Medicaid Assistance Program sustained because of the act of the provider.
- (2) A court may assess a penalty of not less than two times the amount of damages which the Medical Assistance Program sustains because of the act of the provider if a court finds that:
 - a. The provider committing a violation of this section furnished officials of the State responsible for investigating false claims violations with all information known to the provider about the violation within 30 days after the date the provider first obtained the information;
 - b. The provider fully cooperated with any State investigation of the violation; and
 - c. At the time the provider furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the provider did not have actual knowledge of the existence of an investigation into the violation.
- (3) In addition to the damages and penalty assessed by the court pursuant to subdivision (1) or (2) of this subsection, a provider violating this section shall also be liable for the costs of a civil action brought to recover any penalty or damages, interest on the damages at the maximum legal rate in effect on the date the payment was made to the provider for the period from the date upon which payment was made to the provider to the date upon which repayment is made by the provider to the Medical Assistance Program, and the costs of the investigation.
- (4) As applied to providers that are subject to certification review by the Division of Facility Services, a violation of Medicaid provider certification standards in providing a service, good, or accommodation shall not be considered an independent basis for liability under this Act. However, liability may be imposed if a false or fraudulent claim is presented as set forth in subsection (a)

of this section in connection with that service, good, or accommodation.

(c) Effect of Repayment. -- Intent to repay or repayment of any amounts obtained by a provider as a result of any acts described in subsection (a) of this section shall not be a defense to or grounds for dismissal of an action brought pursuant to this section. However, a court may consider any repayment in mitigation of the amount of any penalties assessed.

"§ 108A-70.13. False claims procedure.

(a) The Attorney General shall have the authority to investigate, institute proceedings, compromise and settle any investigation or action, and perform all duties in connection with any civil action to enforce G.S. 108A-70.12.

(b) A civil action under G.S. 108A-70.12 may not be brought more than six years after the date the violation of G.S. 108A-70.12 is committed, or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under G.S. 108A-70.12, the State shall be required to prove all essential elements of the cause of action, including damages, by the greater weight of the evidence.

(d) Notwithstanding any other provision of law or rule, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under G.S. 108A-70.12.

(e) No criminal or administrative action need be brought against any provider as a condition for establishing civil liability under G.S. 108A-70.12. The civil liability under G.S. 108A-70.12 is in addition to any other criminal, civil, and administrative liabilities or penalties that may be prescribed by law. However, treble and double damages and civil penalties provided by G.S. 108A-70.12 shall not be assessed against a provider if treble or double damages or civil penalties have been previously assessed against the provider for the same claims under the federal False Claims Act, 31 U.S.C. § 3729, et seq., or the federal Civil Monetary Penalty Law, 42 U.S.C. § 1320a-7a. In the event that any provider is found liable under the provisions of this Act and is subsequently found liable for the same claim under the federal False Claims Act, or the appropriate sections of the federal Civil Monetary Penalty Law, the State and the Medical Assistance Program shall pay to the federal government on behalf of the provider any amounts, other than restitution, recovered or otherwise obtained by the State under this Act, not to exceed the amount of the federal damages and penalties.

(f) The amount of damages and number of violations of G.S. 108A-70.12 shall be established by the trial judge or, in the event of a jury trial, by jury verdict. The amount of penalties, treble or double damages, interest, cost of the investigation, and cost of the civil action shall be determined by the trial judge as prescribed in G.S. 108A-70.12(b).

(g) Venue for any action brought pursuant to G.S. 108A-70.12 shall be in either Wake County or in any county in which claim originated, or in which any statement or record was made, or acts done, or services, goods, or accommodations rendered in connection with any act constituting part of the violation of G.S. 108A-70.12.

"§ 108A-70.14. Civil investigative demand.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 108A-70.12, the Attorney General may serve upon the person, before bringing an action under G.S. 108A-70.12 or other false claims law, a civil investigative demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall:

- (1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice;
- (2) Describe the nature of the conduct constituting the violation under investigation;
- (3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified;
- (4) Contain a copy of any written interrogatories to be answered;
- (5) Prescribe a reasonable date and time at which the person shall appear to testify, answer any written interrogatories, or produce any document or object;
- (6) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time;
- (7) Specify a place for the taking of testimony;
- (8) Designate a person to whom answers to written interrogatories shall be submitted and to whom any document or object shall be produced; and
- (9) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which to answer any written interrogatories and within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person. The date within which a person must appear to testify shall be more than 15 days after the demand has been served upon a person who resides out-of-state or more than 10 days after the demand has been served upon a person who resides in-state.

(d) The person before whom the oral examination is to be taken shall put the person to be examined on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the person to be examined. The Attorney General may exclude from the place where the examination is held all persons except the person

giving the testimony, the attorney or other representative of the person giving the testimony, the Attorney General conducting the examination, the investigator assisting the Attorney General, the stenographer, and any other person agreed upon by the Attorney General and the person giving the testimony. When the testimony is transcribed, the person shall have a reasonable opportunity to examine and read the transcript, unless an examination and reading are waived by the person. Any changes in form or substance which the person desires to make shall be entered and identified upon the transcript by the person. The transcript shall then be signed by the person, unless the person in writing waives the signing, is ill, cannot be found, or refuses to sign.

(e) Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. If a person objects to any interrogatory, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(f) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(g) No person shall be excused from testifying, answering interrogatories, or producing documents or objects in response to a civil investigative demand on the ground that the testimony, answers, documents, or objects required of the person may tend to incriminate the person. However, no testimony, answers, documents, or objects compelled pursuant to G.S. 108A-70.14 may be used against the person in a criminal action, except a prosecution for perjury or for contempt arising from a failure to comply with an order of the court.

(h) Any person appearing for oral testimony under a civil investigative demand issued pursuant to this section shall be entitled to the same fees and allowances paid to witnesses in the General Court of Justice of the State of North Carolina.

(i) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this

section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules for Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 108A-70.12, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(j) If the person fails to comply with an order entered pursuant to subsection (i) of this section, the court may:

(1) Adjudge the person to be in contempt of court;

(2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or

(3) Grant any other relief as the court may deem proper.

(k) Any transcript of oral testimony, answers to written interrogatories, and documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 108A-70.12.

(l) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"§ 108A-70.15. Employee remedies.

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this Part.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. 108A-70.12, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. 108A-70.12, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section.

"§ 108A-70.16. Uniformity of interpretation.

This Part shall be so interpreted and construed as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act."

Section 2. This act becomes effective December 1, 1997, and applies to violations committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1997.

Became law upon approval of the Governor at 2:15 p.m. on the 25th day of July, 1997.

H.B. 229

CHAPTER 339

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO
DEVELOP SPECIAL MOTOR VEHICLE REGISTRATION PLATES
FOR VIETNAM VETERANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 1997.

Became law upon approval of the Governor at 2:16 p.m. on the 25th day of July, 1997.

H.B. 1044

CHAPTER 340

AN ACT TO AUTHORIZE COUNTIES TO DESIGNATE AN OFFICIAL
TO RECEIVE SALES TAX REFUND INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(f) reads as rewritten:

"(f) (See editor's note) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the ~~chair of the board of county commissioners~~ designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection (b) or (c) of this section of at least one thousand dollars (\$1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection (b) or (c) of this section shall provide the ~~chair of the board of county commissioners~~ designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection (b) or (c) of this section is incorrect, it shall file an amended request for the refund."

Section 2. G.S. 105-259(b)(6a) reads as rewritten:

"(6a) To furnish ~~the chair of a board of county commissioners~~ the county official designated under G.S. 105-164.14(f) a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105-164.14(f)."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 1997.

Became law upon approval of the Governor at 2:17 p.m. on the 25th day of July, 1997.

S.B. 625

CHAPTER 341

AN ACT TO MAKE SPEEDING IN EXCESS OF THE POSTED SPEED ON SCHOOL GROUNDS AN INFRACTION AND TO INCREASE THE PENALTY FOR SPEEDING IN A SCHOOL ZONE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141 is amended by adding a new subsection to read:

"(e1) Local authorities within their respective jurisdictions may authorize, by ordinance, lower speed limits than those set in subsection (b) of this section on school property. If the lower speed limit is being set on the grounds of a public school, the local school administrative unit must request or consent to the lower speed limit. If the lower speed limit is being set on the grounds of a private school, the governing body of the school must request or consent to the lower speed limit. Speed limits established pursuant to this subsection shall become effective when appropriate signs giving notice of the speed limit are erected upon affected property. A person who drives a motor vehicle on school property at a speed greater than the speed limit set and posted under this subsection is responsible for an infraction and is required to pay a penalty of not less than twenty-five dollars (\$25.00)."

Section 1.1. G.S. 20-141.1 reads as rewritten:

"§ 20-141.1. *Speed limits in school zones.*

The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by erecting signs giving notice of the school zone, the authorized speed limit and which indicate the days and hours the lower limit is effective by an electronic flasher operated with a time clock. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this section. A person who drives a motor vehicle in a school zone at a speed greater than the speed limit set and posted under this section is responsible for an infraction

and is required to pay a penalty of not less than twenty-five dollars (\$25.00)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1997.

Became law upon approval of the Governor at 10:48 a.m. on the 25th day of July, 1997.

H.B. 337

CHAPTER 342**AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.**

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph County Board of Commissioners may by resolution levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose.

(b) **Administration.** A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) **Distribution and use of tax revenue.** Randolph County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism Development Authority. The Authority may use these funds and any other revenue it receives only to develop or promote travel and tourism and for tourism-related expenditures in Randolph County. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Randolph County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) **Net proceeds.** -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.
- (2) **Promote travel and tourism.** -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) **Tourism-related expenditures.** -- Expenditures that are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism.

Examples of tourism-related expenditures include expenditures to create, advertise, promote, and support cultural programs, events, festivals, public park and recreation areas, historic preservation and museums, beautification projects, parking facilities, and other public amenities and services.

Section 2. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to Madison and Nash Madison, Nash, and Randolph Counties."

Section 3. Tourism Development Authority. (a) **Appointment and membership.** When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of nine members to be appointed by the board of commissioners as follows:

- (1) Seat 1 shall represent the hotel and motel industry, seat 4 shall represent the North Carolina Zoological Park, seat 7 is unrestricted, and seat 9 shall represent the county.
- (2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation of the Archdale/Trinity Chamber of Commerce, the Asheboro/Randolph Chamber of Commerce, the Liberty Chamber of Commerce, and the Randleman Chamber of Commerce, respectively.
- (3) Seat 8 shall represent the hotel and motel industry and shall be appointed upon the recommendation of the Asheboro/Randolph Chamber of Commerce.

In appointing and recommending members, each entity shall strive to select individuals who either have expertise in promoting and developing travel and tourism or are affiliated with organizations that collect the tax. The board of commissioners may reject the recommendation of a chamber of commerce and require the chamber to submit additional names within 30 days after the rejection. If the chamber does not submit additional names within this period, the board of commissioners may appoint someone to the seat based upon its own recommendation.

All members of the Authority serve at the pleasure of the board of commissioners and may be removed by the board at any time. The board of commissioners shall designate one member of the Authority as chair and another as cochair. Members shall serve without compensation.

Except for initial terms, the term of office shall be for three years. No member may serve more than two consecutive three-year terms. The initial terms for seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two years. The initial terms for seats 7, 8, and 9 shall be three years.

The Authority shall meet at the call of the chair and shall adopt bylaws and rules of procedure to govern its meetings. The Finance Officer for Randolph County shall be the ex officio finance officer of the Authority.

(b) **Duties.** The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

(c) **Powers.** In addition to other powers conferred by law, the Authority may contract with any person, firm, corporation, or agency to assist it in carrying out its duties. All contracts the Authority enters into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. The Authority may accept contributions from any source to be used for the purposes provided in Section 1 of this act.

(d) **Reports.** The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law on the date it was ratified.

S.B. 356

CHAPTER 343

AN ACT TO ALLOW THE CITY OF REIDSVILLE TO DELAY THE EFFECTIVE DATE OF ANNEXATIONS AS TO A SPECIFIED TRACT AND TO EXEMPT THE ANNEXATION OF TWO CITY LAKES FROM THE CEILING ON SATELLITE ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Reidsville, being Chapter 957, Session Laws of 1989, is amended by adding the following new sections:

"Sec. 1.4. **Effective date of annexation ordinances.**

(a) The provisions of G.S. 160A-31(d), 160A-58.2, and 160A-58.7 notwithstanding, the city council may make annexation ordinances adopted pursuant to Part 1 or 4 of Article 4A of Chapter 160A of the General Statutes effective on any specified date within four years from the date of passage of the annexation ordinance.

(b) The provisions of G.S. 160A-49(e)(4) notwithstanding, the city council may fix the effective date of annexation ordinances adopted pursuant to Part 3 of Article 4A of Chapter 160A of the General Statutes for any date not less than 40 days nor more than four years from the date of passage of the ordinances.

(c) This section applies only to the following described area:

Being a tract of land located in Reidsville Township, Rockingham County, North Carolina.

BEGINNING at a concrete right-of-way monument at the southwest quadrant intersection of N.C. Highway 87 and U.S. Highway 29; specifically, said beginning monument being located by North Carolina Grid system tie North 69 deg. 13 min. 47 sec. West 416.92 feet from North Carolina Grid monument 'Holiday Inn,' a brass disc set in concrete on the north side of the N. C. Highway 87 bridge over U.S. Highway 29 and approximately situated over the western edge of the east lane of U. S. Highway 29; thence, from said beginning monument along and with the

western controlled access right-of-way of U. S. Highway 29 the following courses and distances:

South 10 deg. 29 min. 32 sec. West 329.37 feet to a concrete monument,
 South 02 deg. 25 min. 31 sec. West 214.10 feet to a concrete monument,
 South 02 deg. 27 min. 59 sec. East 109.57 feet to a concrete monument,
 South 01 deg. 05 min. 19 sec. East 192.01 feet to a concrete monument,
 South 05 deg. 26 min. 27 sec. West 243.44 feet to a concrete monument,
 South 16 deg. 37 min. 08 sec. West 1,242.82 feet to an existing iron pipe,
 a corner with Laidlaw Environmental Services, Inc.; thence leaving the
 controlled access right-of-way of U. S. Highway 29 and with the line of
 Laidlaw Environmental Services North 80 deg. 35 min. 23 sec. West
 952.84 feet to an existing iron pipe in the east right-of-way of Watlington
 Industrial Drive (SR 2664); thence continuing with said right-of-way, North
 00 deg. 27 min. 49 sec. East 632.38 feet to an iron pipe set at the P. C. of
 a curve; thence continuing with said right-of-way along the arc of a curve
 right with a radius of 1,442.45 feet, a distance of 456.49 feet to an iron pipe
 set; said curve having a chord of North 09 deg. 31 min. 47 sec. East
 454.59 feet; thence North 18 deg. 35 min. 45 sec. East 754.96 feet to an
 iron pipe set in said right-of-way of Watlington Industrial Drive and being
 the P. C. of a curve; thence continuing along with said right-of-way the arc
 of said curve right with a radius of 1,424.90 feet, a distance of 393.88 feet
 to an iron pipe set, said curve having a chord of North 26 deg. 30 min. 54
 sec. East 392.63 feet; thence continuing said right-of-way North 34 deg. 25
 min. 31 sec. East 544.62 feet to an iron pipe set in the right-of-way at the
 southeast quadrant intersection of Watlington Industrial Drive and N. C.
 Highway 87; thence along and with the right-of-way of N. C. Highway 87 at
 the following courses and distances: South 51 deg. 21 min. 01 sec. East
 386.10 feet to a concrete right-of-way monument, South 48 deg. 48 min. 36
 sec. East 247.82 feet to a concrete right-of-way monument, South 48 deg.
 54 min. 44 sec. East 115.28 feet to a concrete right-of-way monument,
 the point of beginning and containing 60.269 Acres as per survey dated May
 24, 1993, by Obie M. Chambers and Associates, R. L. S., Reidsville,
 North Carolina.

"Sec. 1.5. **Satellite annexations.** The area annexed by an annexation ordinance adopted by the City of Reidsville on April 13, 1995, shall not be included in any calculations made under G.S. 160A-58.1(b)(5)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law on the date it was ratified.

S.B. 534

CHAPTER 344

AN ACT TO INCORPORATE THE TOWN OF PLEASANT GARDEN.

The General Assembly of North Carolina enacts:

Section 1. A Charter of the Town of Pleasant Garden is enacted as follows:

"THE CHARTER OF THE TOWN OF PLEASANT GARDEN.

"CHAPTER I.**"INCORPORATION AND CORPORATE POWERS.**

"Section 1-1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Pleasant Garden are a body corporate and politic under the name 'Town of Pleasant Garden'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.**"CORPORATE BOUNDARIES.**

"Sec. 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Pleasant Garden are as follows:
BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R. 3325) at its intersection with the western line of Fentress Township with Sumner Township, and running; thence, along the southern right-of-way line of said Ritters: Lake Road, eastwardly approximately 8440 feet to a point;
thence, along the western line of tax parcel ACL-3-152-540-9, southeastwardly approximately 500 feet to a point;
thence, along the western line of tax parcels ACL-3-152-540-46 and 47, southwardly approximately 1750 feet to a point;
thence, along the southern line of tax parcels ACL-3-152-540-47, 8, and 7, northeastwardly approximately 2140 feet to a point;
thence, along the eastern line of tax parcel ACL-3-152-540-7, northeastwardly approximately 150 feet to a point;
thence, along the southern line of tax parcels ACL-3-152-540-41, 42, and 43, eastwardly approximately 2275 feet to a point;
thence, along the western right-of-way line of Alliance Church Road (N.C. Highway 22), northwardly approximately 500 feet to a point;
thence, crossing said Alliance Church Road, northeastwardly approximately 200 feet to a point in the northern right-of-way line of a proposed new road connecting Alliance Church Road with U. S. Highway 421;
thence, along the northern right-of-way line of said connector road, northeastwardly approximately 1350 feet to a point;
thence, along the southwestern right-of-way line of U. S. Highway 421, southeastwardly approximately 14,400 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
thence, along the centerline of Hagan-Stone Park Road (S.R. 3411), southwardly approximately 2,500 feet to a point;
thence, along the southern line of tax parcel ACL-9-579-411-39, westwardly approximately 350 feet to a point;
thence, along a line of the Pleasant Garden Fire District and across tax parcel ACL-9-579-411-19, southwardly approximately 175 feet to a point in the northern line of tax parcel ACL-9-579-411-43;
thence, along the northern line of said tax parcel ACL-9-579-411-43, eastwardly approximately 300 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411), southwestwardly and westwardly approximately 3,600 feet to a point;

thence, along the eastern line of tax parcel ACL-9-579-422-32, southwardly approximately 1,750 feet to a point;

thence, along the southern line of said tax parcel ACL-9-579-422-32, westwardly approximately 1,900 feet to a point;

thence, along a western line of said tax parcel ACL-9-579-422-32, northwardly approximately 230 feet to a point;

thence, along a northern line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, eastwardly approximately 600 feet to a point;

thence, along a western line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, northwardly approximately 1,200 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);

thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411) northeastwardly approximately 800 feet to a point;

thence, along the western line of tax parcels ACL-9-579-422-35 and 23, with Hagan-Stone Park, northwardly approximately 1,530 feet to a point in the southern line of tax parcel ACL-9-579-422-12;

thence, along the southern line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, westwardly approximately 480 feet to a point;

thence, along the western line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, northwardly approximately 1,350 feet to a point in the centerline of Tabernacle Church Road (S.R. 3412);

thence, along the centerline of said Tabernacle Church Road (S.R. 3412) westwardly approximately 150 feet to a point;

thence, along the eastern line of tax parcel ACL-9-579-422-11 with Hagan-Stone Park southwardly approximately 1,300 feet to a point;

thence, along the southern line of tax parcels ACL-9-579-422-11 and 7 and ACL-9-579-477-11, 15, 33, 35, and 26, with Hagan-Stone Park, westwardly approximately 2,100 feet to a point;

thence, along the eastern line of tax parcel ACL-9-579-477-25 with Hagan-Stone Park southwardly approximately 280 feet to a point;

thence, along the southern line of tax parcels ACL-9-579-477-25, 24, and 41 with Hagan-Stone Park southwestwardly approximately 1,370 feet to a point;

thence, along the western line of tax parcel ACL-9-579-477-41 with Hagan-Stone Park, northeastwardly approximately a 700 feet to a point, the southeast corner of tax parcel ACL-9-579-477-40;

thence, along the southern line of tax parcels ACL-9-579-477-40 and 43 with Hagan-Stone Park, westwardly approximately 1,350 feet to a point;

thence, along the eastern line of tax parcels ACL-9-579-477-43, ACL-3-156-482-2 and 5, ACL-3-156-487-1 and 6 and ACL-9-579-478-8, southwardly approximately 3,800 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);

thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411) eastwardly approximately 2,800 feet to a point;

thence, along the eastern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, southwardly approximately 125 feet to a point;

thence, along the northern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, eastwardly approximately 1,200 feet to a point;

thence, along the eastern side of tax parcel ACL-9-579-478-3 the following 5 courses:

- (1) Southwardly approximately 500 feet to a point
- (2) Eastwardly approximately 100 feet to a point
- (3) Southwardly approximately 975 feet to a point
- (4) Westwardly approximately 190 feet to a point
- (5) Southwardly approximately 1,300 feet to a point in the centerline of Fieldview Road (S.R. 3407);

thence, along the centerline of said Fieldview Road (S.R. 3407) southeastwardly and eastwardly approximately 1,700 feet to a point;

thence, along the eastern line of tax parcel ACL-9-577-420-19, southwardly approximately 620 feet to a point;

thence, along the southern line of tax parcel ACL-9-577-420-19, westwardly approximately 300 feet to a point;

thence, along the eastern line of tax parcel ACL-9-577-420-21, southwardly approximately 400 feet to a point;

thence, along the southern line of tax parcels ACL-9-577--420-21, 22, and 23, north westwardly approximately 800 feet to a point;

thence, along the southern line of tax parcels ACL-9-577-420-9 and 26, southwestwardly approximately 1450 feet to a point in the eastern line of tax parcel ACL-9-579-479N-4; thence, along the eastern side of tax parcel ACL-9-579-479N-4, the following 3 courses:

- (1) Southwardly approximately 200 feet to a point
- (2) Eastwardly approximately 50 feet to a point
- (3) Southwardly approximately 1,350 feet to a point, the southeast corner of said tax parcel ACL-9-579-479N-4;

thence, along the southern line of tax parcel ACL-9-579-479N-4, westwardly approximately 1,800 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-479S-15, southwestwardly approximately 280 feet to a point;

thence, along the eastern line of tax parcel ACL-3-158-479S-4, southwardly approximately 200 feet to a point;

thence, along the southern line of said tax parcel ACL-3-158-479S-4, southwestwardly approximately 380 feet to a point in the centerline of N.C. Highway 22;

thence, along the centerline of said N.C. Highway 22, southeastwardly approximately 600 feet to a point;

thence, along the southern line of tax parcels ACL-3-158-479S-3, 13, 12, and 17, ACL-3-158-485-11, ACL-3-158-486S-15, 13, and 12, southwestwardly approximately 3,000 feet to a point, the northeastern corner of tax parcel ACL-3-158-485-6;

thence, along the eastern line of said tax parcel ACL-3-158-485-6, southwardly approximately 1,900 feet to a point;

thence, along the southern line of tax parcels ACL-3-158-485-6 and 9, westwardly approximately 1,430 feet to a point in the centerline of Kearney Road (S.R. 3404);

thence, along the centerline of said Kearney Road (S.R. 3404), northwardly approximately 300 feet to a point;

thence, along the southern line of tax parcels ACL-3-158-485-6 and ACL-3-158-546-2, westwardly approximately 2,200 feet to a point;

thence, along a western line of tax parcel ACL-3-158-546-2, northwardly approximately 960 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-2, westwardly approximately 1,300 feet to a point;

thence, along the eastern line of tax parcels ACL-3-158-546-12, 13, 14, 21, 15, 16, 17, 18, 19, and 20, southwardly approximately 1,600 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-20, westwardly approximately 300 feet to a point in the centerline of Hunt Road (S.R. 3402);

thence, along the centerline of said Hunt Road (S.R. 3402), southward approximately 650 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-3, westwardly approximately 1,000 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-7, North westwardly approximately 630 feet to a point;

thence, along the western line of tax parcels ACL-3-158-546-7, and 30, northeastwardly approximately 1,020 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-551-25 and the southern line of Pleasant Grove Subdivision which is designated at B-Sub of block 551, tax map ACL-91-6784, westwardly approximately 650 feet to a point, the northeast corner of tax parcel ACL-91-6784-551-12;

thence, along the eastern line of said tax parcel ACL-91-6784-551-12, southwardly approximately 500 feet to a point;

thence, along the southern line of said tax parcel ACL-91-6784-551-12, westwardly approximately 520 feet to a point, the northeast corner of Center Subdivision;

thence, along eastern lines of said Center Subdivision, which is designated as A-Sub of block 551, tax map ACL-91-6784, the following 5 courses;

- (1) Southwestwardly approximately 500 feet to a point;
- (2) Southeastwardly approximately 200 feet to a point;
- (3) Southwestwardly approximately 600 feet to a point;
- (4) North westwardly approximately 200 feet to a point;
- (5) Southwestwardly approximately 300 feet to a point;

thence, along the southern line of said Center Subdivision, westwardly approximately 460 feet to a point in the centerline of Branson Mill Road (S.R. 3437);

thence, along the centerline of said Branson Mill Road (S.R. 3437), northeastwardly approximately 100 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-550N-22, westwardly approximately, 550 feet to a point in the eastern line of tax parcel ACL-91-6784-550N-1;

thence, along the eastern line of said tax parcel ACL-91-6784-550N-1, southwardly approximately 75 feet to a point;

thence, along the southern line of tax parcels ACL-91-6794-550N-1 and 15, westwardly approximately 350 feet to a point;

thence, along the eastern line of tax parcel ACL-91-6784-550N-14, southwardly approximately 700 feet to a point;

thence, along the southern line of said tax parcel ACL-91-6784-550N-14, westwardly approximately 950 feet to a point;

thence, along the western line of tax parcels ACL-91-6784-550N-14, 11, and 21 and ACL-91-6784-551-2 and crossing Hodgin Valley Road (S.R. 3440), northwardly approximately 2,000 feet to a point;

thence, along the northern line of tax parcels ACL-91-6784-551-2, 17, 5, and 14 and the northern line of Center Subdivision, which is designated as A-Sub of block 551, ACL-91-6784, westwardly approximately 2,170 feet to a point in the centerline of Branson Mill Road (S.R. 3437);

thence, along the centerline of said Branson Mill Road (S.R. 3437), northeastwardly approximately 1,100 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-551-18, northwestwardly approximately 400 feet to a point;

thence, along the western line of tax parcels ACL-91-6784-551-18 and 8, northwestwardly approximately 1,300 feet to a point;

thence, along the southern line of tax parcels ACL-91-6784-551-8, 24, and 22, westward approximately 950 feet to a point;

thence, along the western line of tax parcels ACL-91-6784-551-22 and 23, northwestwardly approximately 1,050 feet to a point;

thence, along the northern line of tax parcel ACL-91-6784-551-23, northeastwardly approximately 350 feet to a point, the southwest corner of tax parcel ACL-91-6784-552S-6;

thence, along the western line of said tax parcel ACL-91-6784-552S-6, northwardly approximately 750 feet to a point;

thence, along the southern line of tax parcels ACL-91-6784-552S-6 and 5, southwestwardly approximately 1,800 feet to a point in the eastern line of tax parcel ACL-91-6784-611S-3;

thence, along the southeastern line of said tax parcel ACL-91-6784-611S-3 as it meanders southwestwardly approximately 840 feet to a point;

thence, along the southern line of said tax parcel ACL-91-6784-611S-3, southwestwardly approximately 620 feet to a point;

thence, along the southwestern line of said tax parcel ACL-91-6784-611S-3, as it meanders northwestwardly approximately 875 feet to a point in the centerline of Robolo Road (S.R. 3439);

thence, along the centerline of said Robolo Road (S.R. 3439) southwestwardly; approximately 900 feet to its intersection with the western line of Davis Mill Road;

thence, along the western line of Davis Mill Road, northwardly approximately 7820 feet to a point in the northern line of tax parcel ACL-9-635-609-19;

thence, along the northern line of tax parcel ACL-9-635-609-19, southeastwardly approximately 470 feet to a point in the westernline of Davis Mill Road (S.R. 3433);
 thence, along the westernline of said Davis Mill Road (S.R. 3433), northeastwardly approximately 3,050 feet to a point;
 thence, along the southern line of Nocho Park Subdivision which is designated as B-Sub of block 609, ACL-9-635, westwardly approximately 1,350 feet to a point;
 thence, along the western line of said Nocho Park Subdivision, northwardly approximately 1,350 feet to a point in the centerline of Sheraton Park (S.R. 3426);
 thence, along the centerline of said Sheraton Park Road (S.R. 3426) westwardly approximately 1440 feet to its intersection with the western line of Fentress Township with Sumner Township;
 thence, along the western line of Fentress Township with Sumner Township, northwardly approximately 8180 feet to the point of BEGINNING.

"Sec. 2-2. Annexation of Property. (a) The right to annex properties into the boundaries of the Town of Pleasant Garden in accordance with Article 4A of Chapter 160A of the General Statutes shall only apply to properties located south of the Town's corporate limits and confined within the following boundaries: bounded on the east by U.S. 421, running southwardly to Company Mill Road; thence along Company Mill Road to Monnett Road; thence along Monnett Road to N.C. 22; thence along N.C. 22 to the Guilford County line; and bounded on the west by the Fentress Township line beginning at Ritters Lake Road and running southwardly to the west right-of-way line of Davis Mill Road; thence Davis Mill Road to the Guilford County line.

Annexation of property into the boundaries of the Town of Pleasant Garden shall come at the request of the owners of real property according to G.S. 160A-31 or G.S. 160A-58.1. No property shall be annexed by the Town of Pleasant Garden involuntarily under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes.

(b) In the event the boundaries are to be modified, changed, altered, reduced or extended through future action of the General Assembly by request of the Town Council, the Town Clerk or other person designated by the Town Council shall notify the Mayor and City Council of the City of Greensboro, in writing, prior to the convening of the next ensuing session of the General Assembly in which a change in the boundaries is to be considered and shall first seek the support of the City of Greensboro.

(c) G.S. 160A-58.1(b)(2) shall not apply to the City of Greensboro as it relates to the Town of Pleasant Garden.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3-1. Structure of the Governing Body; Number of Members. The governing body of the Town of Pleasant Garden is the Town Council which has five members.

"Sec. 3-2. **Manner of Electing Council.** The qualified voters of the entire Town nominate and elect the council.

"Sec. 3-3. **Term of Office of Council Members.** Members of the Council are elected to four-year terms. In 1999, five members shall be elected to the Council. The three members receiving the highest number of votes shall serve four-year terms. The two receiving the next highest number of votes shall serve two-year terms. In 2001, and quadrennially thereafter, two members shall be elected to the Council. In 2003, and quadrennially thereafter, three members shall be elected to the Council.

"Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the Council from among its membership to serve at its pleasure.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4-1. **Method.** Council members shall be elected on a nonpartisan primary basis and the results determined in accordance with G.S. 163-294.

"Sec. 4-2. **Results.** Election results shall be determined by the Guilford County Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5-1. **Mayor-Council Plan.** The Town of Pleasant Garden shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5-2. **Interim Council.** Notwithstanding Section 3-1 of this Charter, from the effective date of this Charter until the organizational meeting of the Town Council after the 1999 municipal election, the members of the Council shall be: Larry Still, Mary Ann McNabb, Bill Wright, Jim Ayres, Betsy Lowder, Amy Parsons, Terry Lee, Ken Lentz, Gene Kimel, Scott Nowlan, and Cynthia Spencer.

"Sec. 5-3. **Taxation and Funds.** (a) The Town of Pleasant Garden is eligible to receive distributions of State funds during the fiscal year 1997-98.

(b) Notwithstanding G.S. 160A-209(d), except with the approval of the qualified voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad valorem taxes in excess of twenty cents (20¢) on the one hundred dollar (\$100.00) valuation. This subsection does not limit taxation to pay the debt service on general obligation indebtedness incurred by the Town in accordance with law."

Section 2. (a) From and after the effective date of this act, the citizens and property in the Town of Pleasant Garden shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) If the effective date of this act is before July 1, 1997, the Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control

Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 3. (a) The Guilford County Board of Elections shall conduct an election on a date set by the Guilford County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Pleasant Garden, the question of whether or not such area shall be incorporated as the Town of Pleasant Garden. The date of the election shall be not more than 90 days after the date of approval of this act under section 5 of the Voting Rights Act of 1965. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the Town of Pleasant Garden".

Section 4. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Pleasant Garden", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

H.B. 750

CHAPTER 345

AN ACT TO INCORPORATE THE VILLAGE OF FOREST HILLS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Forest Hills is enacted to read:

"CHARTER OF THE VILLAGE OF FOREST HILLS.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Forest Hills are a body corporate and politic under the name 'Village of Forest Hills'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Forest Hills are as follows:
BEGINNING at the point of intersection of the projection of a Northwest direction of a line extending along the Northeastern boundary of Lot 1. of the Forest Hills Subdivision shown on Jackson County NC tax map

"Sec. 3-2. **Manner of Electing Council.** The qualified voters of the entire Town nominate and elect the council.

"Sec. 3-3. **Term of Office of Council Members.** Members of the Council are elected to four-year terms. In 1999, five members shall be elected to the Council. The three members receiving the highest number of votes shall serve four-year terms. The two receiving the next highest number of votes shall serve two-year terms. In 2001, and quadrennially thereafter, two members shall be elected to the Council. In 2003, and quadrennially thereafter, three members shall be elected to the Council.

"Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the Council from among its membership to serve at its pleasure.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4-1. **Method.** Council members shall be elected on a nonpartisan primary basis and the results determined in accordance with G.S. 163-294.

"Sec. 4-2. **Results.** Election results shall be determined by the Guilford County Board of Elections according to Chapter 163 of the General Statutes.

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"ADMINISTRATION.

"Sec. 5-1. **Mayor-Council Plan.** The Town of Pleasant Garden shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

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(b) Notwithstanding G.S. 160A-209(d), except with the approval of the qualified voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad valorem taxes in excess of twenty cents (20¢) on the one hundred dollar (\$100.00) valuation. This subsection does not limit taxation to pay the debt service on general obligation indebtedness incurred by the Town in accordance with law."

Section 2. (a) From and after the effective date of this act, the citizens and property in the Town of Pleasant Garden shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) If the effective date of this act is before July 1, 1997, the Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control

Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 3. (a) The Guilford County Board of Elections shall conduct an election on a date set by the Guilford County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Pleasant Garden, the question of whether or not such area shall be incorporated as the Town of Pleasant Garden. The date of the election shall be not more than 90 days after the date of approval of this act under section 5 of the Voting Rights Act of 1965. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

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Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

H.B. 750

CHAPTER 345

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"CHARTER OF THE VILLAGE OF FOREST HILLS.

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"CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Forest Hills are as follows:
BEGINNING at the point of intersection of the projection of a Northwest direction of a line extending along the Northeastern boundary of Lot 1. of the Forest Hills Subdivision shown on Jackson County NC tax map

7559(17) with a Northeast projection of a line extending along the North side of State Road 1330 (Dillard Farm Road),

-Thence Southeast to the easternmost corner of Lot 2, Forest Hills Subdivision,

-Thence turning and running in a south and southeasterly direction to the southeasternmost corner of Lot 14, Forest Hills Subdivision identified as tax parcel 7559-20-2275,

-Thence turning and running in a west and southwest direction with the southeast boundaries of Lots 9, 10, 11, 12, 13, and 14 of the Forest Hills Subdivision identified as Jackson County tax parcels 7559-10-6040, 7559-10-7085, 7559-10-9110, 7559-20-0134, 7559-20-1148 and 7559-20-2275 to the Southwesternmost corner of Lot 9, Forest Hills Subdivision, identified as Jackson County tax parcel 7559-10-6040,

-Thence turning and running generally south with the east boundary of Lots 11, 12, 13, 14, 15, and 16 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcels 7558-19-5980, 7558-19-5559, 7558-19-5421, 7558-19-5248, 7558-19-5143, and 7558-18-5946 to the southernmost corner of Lot 16, Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-18-5946,

-Thence turning and running west and southwest with the southeast boundaries of Lots 16, 18, 20, and 23 of the Forest Hills Subdivision identified on the Jackson County tax map 7558(05) as parcels 7558-18-5946, 7558-18-4910, 7558-18-2970, and 7558-18-1836 to the Southwesternmost corner of Lot 23 of the Forest Hills Subdivision identified on the Jackson County tax map 7558(05) as parcel 7558-18-1836.

-Thence turning and running southeast with the Northeast boundary of Lot 26 and 27 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-08-9784 and with the Northeast boundary of Lot 20 and Lot 22 of the Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcels 7558-18-1641 and 7558-18-1443 to the southeasternmost corner of Lot 22 of the Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1443,

-Thence turning and running generally southwest with the southeast boundaries of Lot 22 to the Southwesternmost corner of Lot 22 of the Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1443,

-Thence turning and running southeast with the northeast boundary of Lot 15 Oak Forest Subdivision to the easternmost corner of Lot 15, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,

-Thence turning and running generally south along the eastern boundary of Lot 15, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,

-Thence turning and running generally west with the south boundary of Lot 15, Oak Forest Subdivision as identified on Jackson County tax map as parcel 7558-18-1221,

-Thence turning and running generally southwest to the southernmost corner of Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-08-9276,

- Thence turning and running generally northwest to the northwesternmost corner of Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-08-9276,
- Thence turning and running generally southwest with the southeast boundaries of Lots 31, and 32, Forest Hills Subdivision and Lot 20 Forest Hills Estates Subdivision as identified on Jackson County tax map 7558(05) as parcels 7558-08-7222, 7558-08-5173, and 7558-07-2944 to the southeasternmost corner of Lot 20, Forest Hills Estates Subdivision as identified on Jackson County tax map 7558(05) as parcel 7558-07-2944,
- Thence turning and running generally west with the southern boundary of Lot 20, Forest Hills Estates Subdivision identified on Jackson County tax map 7558(05) and with the southern boundaries of Lots 16, 11, and 9, Forest Hills Estates Subdivision as identified on Jackson County tax map 7548(02) as parcels 7548-97-4329, 7548-87-8394, and 7548-87-0413 to the southwesternmost corner of Lot 9, Forest Hills Subdivision as identified on Jackson County tax map 7548(02) as parcel 7548-87-0413,
- Thence turning and running generally north with the west boundaries of Lots 9, 7, 5, and 4 of the Forest Hills Estates Subdivision identified on Jackson County tax map 7548(02) as parcels 7548-87-0413, 7548-77-9820, 7548-78-8182, and 7548-78-9470 to the northwesternmost corner of Lot 4, Forest Hills Estates Subdivision identified on Jackson County tax map as parcel 7548-78-9470,
- Thence turning and running generally west with the southern boundaries of the parcels identified on Jackson County tax map 7548(02) as parcel numbers 7548-78-6523, 7548-78-5506, 7548-78-3569 to the southeasternmost corner of parcel 7548-78-3569 on Jackson County tax map 7548(02),
- Thence turning and running south and southwest with the east and southeast boundaries of parcel number 7548-78-2539 and 7548-68-9458 on Jackson County tax map 7548(02) to the southernmost corner of parcel 7548-68-9458 on Jackson County tax map 7548(02),
- Thence turning and running generally west with the southern boundaries of parcels 7548-68-9458 and 7548-68-5586 on Jackson County tax map 7548(02) to the southwesternmost corner of parcel 7548-68-5586 on Jackson County tax map 7548(02),
- Thence turning and running generally south with the eastern boundary of Lot 41 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel number 7548-68-2313 to the southernmost corner of Lot 41 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-68-2313,
- Thence turning and running generally west with the southern boundaries of Lot 44, 45, 46, and 48 Dillard Subdivision as identified on Jackson County tax map 7548(02) as parcels 7548-58-8172, 7548-58-5171, 7548-58-3123, and 7548-58-0251 to the southwesternmost corner of Lot 48 Dillard Subdivision identified on Jackson County tax map as parcel 7548-58-0251,
- Thence turning and running generally north with the western boundaries of Lot 48 Forest Hills, and Lot 57 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-58-0251, 7548-58-1742, and 7548-

59-1077 to the northwesternmost corner of Lot 57 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-59-1077,
-Thence turning and running generally northeast with the northern boundaries of Lots 57, 58, 60, 62, Dillard Subdivision Lot 344 and 342 Forest Hills Subdivision and Lot 64 Dillard Subdivision identified on Jackson County tax map as parcels 7548-59-1077, 7548-59-6138, 7548-69-9241, 7548-69-2219, 7548-69-6483 and 7548-69-6892 to the northeasternmost corner of Lot 64, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-69-6892,
-Thence turning and running north with the western boundaries of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217 to the northwesternmost corner of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,
-Thence turning and running generally northeast with the northern boundary of Lot 67 Dillard subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217 to the northeasternmost corner of Lot 67 Dillard identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,
-Thence turning and running generally southeast with the eastern boundary of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,
-Thence turning and running generally northeast along the northern boundary of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849 to the northeasternmost corner of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849,
-Thence turning and running generally southeast with the eastern boundary of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849,
-Thence turning and running generally northeast with the boundaries of Lots 316, 306, 304, and 302 Forest Hills Subdivision identified on Jackson County tax map 7548(02) as parcels 7548-89-2866 and two unnumbered parcels,
-Thence turning and running generally north with the western boundary of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281,
-Thence turning and running generally southeast with the eastern boundary of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281,
-Thence turning and running generally northeast for approximately 400 feet with the northern boundary of an unidentified parcel shown on Jackson County tax map 7548(02) to the northwesternmost corner of Lot 84 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-99-4947,

- Thence turning and running generally southeast with the northeast boundary of Lot 84, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-99-4947 to the northeasternmost corner of Lot 84, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-99-4947,
- Thence turning and running generally northeast with the northwest boundary of parcel 7548-99-8653 on Jackson County tax map 7548(02) to the northernmost corner of parcel 7548-99-8653 identified on Jackson County tax map 7548(02),
- Thence turning and running generally southeast with the northeast boundary of parcel 7548-99-8653 identified on Jackson County tax map 7548(02) to the intersection of the northern edge of State Road 1330, Dillard Farm Road, as shown on Jackson County tax map 7548(02),
- Thence turning and running generally east with the north side of State Road 1330, Dillard Farm Road, for approximately 210 ft to the southwesternmost corner of parcel 7558-09-3995 identified on Jackson County tax map 7558(05),
- Thence turning and running north with the western boundary of parcel 7558-09-3995 as identified on Jackson County tax map 7558(02) to the northwesternmost corner of parcel 7558-09-3995 as identified on Jackson County tax map 7558(02),
- Thence turning and running northeast with the northern boundaries of parcels 7558-09-3995 and 7558-09-7459 identified on Jackson County tax map 7558(05) to the northeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax map 7558(05),
- Thence turning and running generally southeast with the northeast boundary of parcel 7558-09-7459 identified on Jackson County tax map 7558(05) to the southeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax map 7558(05),
- Thence turning and running generally north and northwest with the western boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the northwesternmost corner of parcel 7559-10-1074 identified on Jackson County tax map 7559(17),
- Thence turning and running generally northeast with the northwest boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the northeasternmost corner of parcel 7559-10-1074 identified on Jackson County tax map 7559(17),
- Thence turning and running generally southeast with the northeast boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the intersection with the north side of State Road 1330, Dillard Farm Road,
- Thence turning and running generally northeast for approximately 1050 feet with the north side of State Road 1330, Dillard Farm Road, identified on Jackson County tax map 7559(17) to the point of BEGINNING. All references to 'tax maps' refer to Jackson County Tax Maps as of March 3, 1997.

"CHAPTER III.
"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Village of Forest Hills is the Village Council, which has four members and the Mayor.

"Section 3.2. **Manner of Electing Village Council.** The qualified voters of the entire Village of Forest Hills shall elect the members of the Village Council.

"Section 3.3. **Term of Office for Village Council Members.** Members of the Village Council are elected to four-year terms, except for the initial election in 1997 or 1998. In 1997 or 1998, two members of the Village Council shall be elected to four-year terms, and two members of the Village Council shall be elected to two-year terms. Thereafter, each member of the Village Council shall be elected for four-year terms.

"Section 3.4. **Selection of Mayor; Term of Office.** The Mayor is elected to a two-year term. The qualified voters of the entire Village of Forest Hills shall elect a Mayor. A Mayor shall be elected in 1997 or 1998 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis, and the results determined by the plurality method.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160B of the General Statutes. The Mayor shall vote only in those cases necessary to break a tie.

"Section 5.2. **Interim Mayor and Village Council.** Until members of the Village Council are elected in 1997 in accordance with the Village Charter and the law of North Carolina, Irene M. Hooper shall serve as interim Mayor; and Jean Adams, Lawrence G. Kolenbrander, James W. Pearce, and Harold J. Williford shall serve as interim members of the Village Council, with all powers and authority as if they had been duly elected."

Section 2. On or before November 4, 1997, the Jackson County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Village of Forest Hills, the question of whether or not such area shall be incorporated as the Village of Forest Hills.

Section 3. In the election, the question on the ballot shall be:

"[]FOR []AGAINST

Incorporation of the Village of Forest Hills".

Section 4. In the election, if a majority of the votes are cast "For the incorporation of the Village of Forest Hills", this Charter becomes effective on the date that the Jackson County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 3 of this act shall have no force and effect.

Section 5. If a majority of the voters approve an incorporation of the Village of Forest Hills, the election of the Village Council and Mayor shall

take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

S.B. 848

CHAPTER 346

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-331 reads as rewritten:

"§ 160A-331. *Definitions.*

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

- (1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.
- (1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.
- (4) (1b) The 'determination date' is
 - a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
 - b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
 - c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.
- (2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than
 - a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.
- (4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

Section 2. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
- (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), ~~and (3)~~ (3), and (6a) of this section, except with the written consent of the secondary supplier.
- (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.
- (7) Except as provided in subdivisions (1), (2), (3), (5), ~~and (6)~~ (6), and (6a) of this section, a secondary supplier shall not furnish

electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier."

Section 3. G.S. 117-10.2 reads as rewritten:

"§ 117-10.2. *Restriction on municipal service.*

No ~~Except as otherwise provided in this section,~~ no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under ~~G.S. 160-511, 160-512, and 160-513; provided, that an~~ G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ 117-20. *Encumbrance, sale, etc., of property.*

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies, and~~
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ 117-24. *Dissolution.*

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of' (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as

herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total ~~membership, without proxies.~~ membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 4:05 a.m. on the 31st day of July, 1997.

S.B. 463

CHAPTER 347

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256 reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 1, 1997, August 15, 1997, these funds shall revert to the appropriate fund on that date."

EXTEND SENTENCING COMMISSION

Section 2. Section 6 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, Chapter 236 of the 1995 Session Laws, and Section 6 of S.L. 1997-256 reads as rewritten:

"Sec. 6. This act is effective upon ratification, and shall expire ~~July 31, 1997,~~ August 15, 1997."

EXTEND MORATORIUM ON FISHING LICENSES

Section 3. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 7 of S.L. 1997-256, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning July 1, 1994, and ending ~~July 31, 1997,~~ August 15, 1997, under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-153.1. Crab license.
- (3) G.S. 113-154. Shellfish license
- (4) G.S. 113-154.1. Nonvessel endorsements to sell fish."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 4. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 8 of S.L. 1997-256, reads as rewritten:

"(c) Subsection (a) of this section expires ~~July 31, 1997,~~ August 15, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 5. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 9 of S.L. 1997-256, reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by ~~July 31, 1997,~~ August 15, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 6. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws,

Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, and Section 10 of S.L. 1197-256, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~July 31, 1997.~~
August 15, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 7. Section 11 of S.L. 1997-256 reads as rewritten:

"Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective ~~August 1, 1997.~~ August 15, 1997."

CORE SOUND/DESCRIPTION OF AREA A FOR SHELLFISH LEASE MORATORIUM

Section 8. Section 3 of Chapter 547 of the 1995 Session Laws (1996 Regular Session) as amended by Section 1 of Chapter 633 of the 1995 Session Laws (1996 Regular Session) and as rewritten by Section 27.33 of Chapter 18 of the Session Laws of the 1996 Second Extra Session and Section 12 of S.L. 1997-256, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 1, 1997.~~ August 15, 1997."

EFFECTIVE DATE

Section 9. (a) Section 13 of S.L. 1997-256 reads as rewritten:

"Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires ~~August 1, 1997.~~ August 15, 1997."

(b) This act becomes effective July 31, 1997.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 1:00 p.m. on the 31st day of July, 1997.

AN ACT TO PROHIBIT THE DIRECT SHIPMENT OF ALCOHOLIC BEVERAGES TO CONSUMERS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-102.1. Direct shipments from out-of-state prohibited.

(a) It is unlawful for any person who is an out-of-state retail or wholesale dealer in the business of selling alcoholic beverages to ship or cause to be shipped any alcoholic beverage directly to any North Carolina resident who does not hold a valid wholesaler's permit under Article 11 of this Chapter.

(b) The Commission shall mail a notice by certified mail ordering a person who violates the provisions of subsection (a) of this section to cease and desist any shipments of alcoholic beverages to North Carolina residents. If the offender cannot produce a receipt or otherwise show that applicable State taxes have been paid on the shipped alcohol within 30 days after this notice has been deposited by certified mail addressed to the out-of-state retail or wholesale dealer either at the address shown on the shipment or the last known address of that dealer in any legal registry, such as a registry with the Secretary of State for incorporation of a business, or within 30 days after personal service of the notice on the out-of-state retail or wholesale dealer, it shall be presumptive evidence of his intent to ship alcoholic beverages directly to a North Carolina resident who does not hold a valid wholesaler's permit issued by the Commission.

(c) This section shall not apply to producers of beverage alcohol holding a basic permit from the Bureau of Alcohol, Tobacco and Firearms.

(d) Upon determination by the Commission that a holder of a basic permit from the Bureau of Alcohol, Tobacco and Firearms has made an illegal shipment to consumers in North Carolina, the Commission shall notify the Bureau of Alcohol, Tobacco and Firearms in writing and by certified mail and request the Bureau to take appropriate action.

(e) Whoever violates the provisions of this section shall be guilty of a Class I felony and shall pay a fine of not more than ten thousand dollars (\$10,000)."

Section 2. This act becomes effective December 1, 1997.

It was read three times and ratified this the 21st day of July, 1997.

Became law upon approval of the Governor at 3:55 p.m. on the 1st day of August, 1997.

AN ACT TO REDUCE DUPLICATION OF WORK BETWEEN THE OFFICE OF STATE PERSONNEL AND OTHER AGENCIES, DEPARTMENTS, AND INSTITUTIONS BY THE DELEGATION OF AUTHORITY OF CERTAIN FUNCTIONS FROM THE OFFICE OF

STATE PERSONNEL TO THOSE AGENCIES, DEPARTMENTS, AND INSTITUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-1 reads as rewritten:

"§ 126-1. Purpose of Chapter; application to local employees.

It is the intent and purpose of this Chapter to establish for the government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry. It is also the intent of this Chapter that this system of personnel administration shall apply to local employees paid entirely or in part from federal funds, except to the extent that local governing boards are authorized by this Chapter to establish local rules, local pay plans, and local personnel systems. It is also the intent of this Chapter to make provisions for a decentralized system of personnel administration, where appropriate, and without additional cost to the State, with the State Personnel Commission as the policy and rule-making body. The Office of State Personnel shall make recommendations for policies and rules to the Commission based on research and study in the field of personnel management, develop and administer statewide standards and criteria for good personnel management, provide training and technical assistance to all agencies, departments, and institutions, provide oversight, which includes conducting audits to monitor compliance with established State Personnel Commission policies and rules, administer a system for implementing necessary corrective actions when the rule, standards, or criteria are not met, and serve as the central repository for State Personnel System data. The agency, department, and institution heads shall be responsible and accountable for execution of Commission policies and rules for their employees."

Section 2. G.S. 126-3 reads as rewritten:

"§ 126-3. Office of State Personnel established and responsibilities outlined; administration and supervision; appointment, compensation and tenure of Director.

(a) There is hereby established the Office of State Personnel (hereinafter referred to as 'the Office') which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws [Chapter 143A], the Office of State Personnel shall exercise all of its statutory powers in this Chapter independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as 'the Director') appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter. The salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The Director shall serve at the pleasure of the Governor.

(b) The Office shall be responsible for the following activities, and such other activities as specified in this Chapter:

- (1) Providing policy and rule development for the Commission and implementing and administering all policies, rules, and procedures established by the Commission;
- (2) Providing training in personnel management to agencies, departments, and institutions including train-the-trainer programs for those agencies, departments, and institutions who request such training and where sufficient staff and expertise exist to provide the training within their respective agencies, departments, and institutions;
- (3) Providing technical assistance in the management of personnel programs and activities to agencies, departments, and institutions;
- (4) Negotiating decentralization agreements with all agencies, departments, and institutions where it is cost-effective to include delegation of authority for certain classification and corresponding salary administration actions and other personnel programs to be specified in the agreements;
- (5) Administering such centralized programs and providing services as approved by the Commission which have not been transferred to agencies, departments, and institutions or where this authority has been rescinded for noncompliance;
- (6) Providing approval authority of personnel actions involving classification and compensation where such approval authority has not been transferred by the Commission to agencies, departments, and institutions or where such authority has been rescinded for noncompliance;
- (7) Maintaining a computer database of all relevant and necessary information on employees and positions within agencies, departments, and institutions in the State's personnel system;
- (8) Developing criteria and standards to measure the level of compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards in agencies, departments, and institutions to which authority has been delegated for classification, salary administration and other decentralized programs, and determining through routine monitoring and periodic review process, that agencies, departments, and institutions are in compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards;
and
- (9) Implementing corrective actions in cases of noncompliance."

Section 3. G.S. 126-4 reads as rewritten:

"§ 126-4. *Powers and duties of State Personnel Commission.*

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

- (1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

- (2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.
- (3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.
- (4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.
- (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.
- (5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.
- (6) The appointment, promotion, transfer, demotion and suspension of employees.
- (7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.
- (7a) The separation of employees.
- (8) A program of meritorious service awards.
- (9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case

- issue by this Chapter in all cases as the Commission shall find justified.
- (10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.
 - (11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.
 - (12) Repealed by Session Laws 1987, c. 320, s. 2.
 - (13) Repealed by Session Laws 1987, c. 320, s. 3.
 - (14) The implementation of G.S. 126-5(e).
 - (15) Recognition of State employees, public personnel management, and management excellence.
 - (16) The implementation of G.S. 126-7.
 - (17) An alternative dispute resolution procedure.
 - (18) Delegation of authority for approval of personnel actions through decentralization agreements with the heads of State agencies, departments, and institutions.
 - a. Decentralization agreements with Executive Branch agencies shall require a person, designated in the agency, to be accountable to the State Personnel Director for the compliance of all personnel actions taken pursuant to the delegated authority of the agency. Such agreements shall specify the required rules and standards for agency personnel administration.
 - b. The State Personnel Director shall have the authority to take appropriate corrective actions including adjusting employee salaries and changing employee classifications that are not in compliance with policy or standards and to suspend decentralization agreements for agency noncompliance with the required personnel administration standards.

The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in the department head's discretion and upon the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter."

Section 4. This act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 21st day of July, 1997.

Became law upon approval of the Governor at 3:57 p.m. on the 1st day of August, 1997.

S.B. 254

CHAPTER 350

AN ACT TO PROHIBIT DISCRIMINATION IN HEALTH INSURANCE
AND EMPLOYMENT BASED ON GENETIC INFORMATION.*The General Assembly of North Carolina enacts:*

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-215. Genetic information in health insurance.

(a) Definitions. -- As used in this section:

- (1) 'Genetic information' means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member. 'Genetic information' does not include the results of routine physical measurements, blood chemistries, blood counts, urine analyses, tests for abuse of drugs, and tests for the presence of human immunodeficiency virus.
- (2) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:
 - a. Accident
 - b. Credit
 - c. Disability income
 - d. Long-term or nursing home care
 - e. Medicare supplement
 - f. Specified disease
 - g. Dental or vision
 - h. Coverage issued as a supplement to liability insurance
 - i. Workers' compensation
 - j. Medical payments under automobile or homeowners
 - k. Hospital income or indemnity
 - l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance
 - m. Blanket accident and sickness.
- (3) 'Insurer' means an insurance company subject to this Chapter; a service corporation organized under Article 65 of this Chapter; a health maintenance organization organized under Article 67 of this Chapter; or a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(b) For the purpose of this section, routine physical measurements, blood chemistries, blood counts, urine analyses, tests for abuse of drugs, and tests for the presence of human immunodeficiency virus are not to be considered genetic tests.

(c) No insurer shall:

- (1) Raise the premium or contribution rates paid by a group for a group health benefit plan on the basis of genetic information obtained about an individual member of the group.
- (2) Refuse to issue or deliver a health benefit plan because of genetic information obtained about any person to be insured by the health benefit plan.
- (3) Charge a higher premium rate or charge for a health benefit plan because of genetic information obtained about any person to be insured by the health benefit plan."

Section 2. Article 3 of Chapter 95 of the General Statutes is amended by adding the following new section to read:

"§ 95-28.1A. Discrimination against persons based on genetic testing or genetic information prohibited.

(a) No person, firm, corporation, unincorporated association, State agency, unit of local government, or any public or private entity shall deny or refuse employment to any person or discharge any person from employment on account of the person's having requested genetic testing or counseling services, or on the basis of genetic information obtained concerning the person or a member of the person's family. This section shall not be construed to prevent the person from being discharged for cause.

(b) As used in this section, the term 'genetic test' means a test for determining the presence or absence of genetic characteristics in an individual or a member of the individual's family in order to diagnose a genetic condition or characteristic or ascertain susceptibility to a genetic condition. The term 'genetic characteristic' means any scientifically or medically identifiable genes or chromosomes, or alterations or products thereof, which are known individually or in combination with other characteristics to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder, and which are asymptomatic of any disease or disorder. The term 'genetic information' means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member."

Section 3. G.S. 95-241(a), as rewritten by S.L. 1997-153, reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.

- c. Article 2A of Chapter 74 of the General Statutes.
- d. G.S. 95-28.1.
- e. Article 16 of Chapter ~~127A~~, 127A of the General Statutes.
- f. G.S. 95-28.1A.

- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes."

Section 4. Nothing in this act applies to specified accident, specified disease, hospital indemnity, disability, or long-term care health insurance policies.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law upon approval of the Governor at 3:59 p.m. on the 1st day of August, 1997.

S.B. 531

CHAPTER 351

AN ACT TO REQUIRE STATE GOVERNMENT AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS THAT CALLERS MUST GO THROUGH BEFORE CONNECTING TO A PERSON AND TO ALLOW ACCESS TO AN ATTENDANT OR OPERATOR ON THE FIRST MENU.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

- (1) Some telephone systems operated by State government agencies require callers to proceed through several menus to finally reach an individual extension, an arrangement that can be intimidating to the caller;
- (2) Many State telephone systems also make it difficult to reach an attendant or operator at the agency; and
- (3) While automated telephone systems and voice mail are intended to improve the efficiency of government, the first duty of government is to serve the people, and efficiency should not impede the average citizen in attempting to contact a State agency for service or information.

Section 2. State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator from the first menu when calling during normal business hours.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law upon approval of the Governor at 4:00 p.m. on the 1st day of August, 1997.

H.B. 457

CHAPTER 352

AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-178 reads as rewritten:

"§ 113A-178. *Definitions.*

As used in this Article:

- (1) 'Approved forest management plan' ~~shall mean~~ means the forest management plan submitted by the eligible landowner and approved by the Secretary. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.
- (2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, or of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, and cultivation of established young growth of desirable trees. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.
- (3) 'Department' ~~shall mean~~ means the Department of Environment, Health, and Natural Resources.
- (4) 'Eligible landowner' ~~shall mean~~ means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.
- (5) 'Eligible lands' ~~shall mean~~ land means land owned by an eligible landowner.
- (6) 'Forest development assessment' ~~shall mean~~ means an assessment on primary forest products from timber severed in North

Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

- (7) 'Forest development ~~cost-sharing~~ cost-sharing payment' shall ~~mean~~ means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Secretary shall determine, subject to the limitations of this Article.
- (8) 'Forest development fund' shall ~~mean~~ means the ~~special nonlapsing fund established in the Department of Environment, Health, and Natural Resources, designated as the Forest Development Fund, Fund~~ created by G.S. 113A-183.
- (9) 'Secretary' shall ~~mean~~ means the Secretary of Environment, Health, and Natural Resources.
- (10) 'Maintain' means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan."

Section 2. Article 11 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-180.1. *Cost-share agreements.*

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) In the absence of Vis major or Act of God or other factors beyond the landowner's control, a landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

- (1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or
- (2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee."

Section 3. G.S. 113A-183 reads as rewritten:

"§ 113A-183. *Forest Development Fund.*

(a) ~~There is hereby~~ The Forest Development Fund is created in the Department of Environment, Health, and Natural Resources as a fund to be designated the Forest Development Fund, for which fiscal management and responsibility are hereby vested in the Secretary. special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other

investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

- (1) Assessments on primary forest products collected under Article 12 of Chapter 113A of the General Statutes.
- (2) General Fund appropriations.
- (3) Gifts and grants made to the Fund.

~~(b) This fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, and for any funds appropriated specifically for the forest development program from the general fund. Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues derived from the forest development assessment shall not revert but shall remain in the Forest Development Fund until expended under the provisions of this Article.~~

~~(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.~~

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act shall may be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the general fund General Fund to the Forest Development Fund designated specifically for equipment purchase."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law upon approval of the Governor at 4:05 p.m. on the 1st day of August, 1997.

H.B. 618

CHAPTER 353

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR MISREPRESENTATION AND FOR FAILURE TO SECURE COMPENSATION UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-88.2 reads as rewritten:

"§ 97-88.2. Penalty for ~~misrepresentation~~ fraud.

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a Class 1 ~~misdemeanor~~ misdemeanor if the amount at issue is less than one thousand dollars (\$1,000). Violation of this section is a Class H felony if the amount at issue is one thousand dollars (\$1,000) or more. The court may order restitution.

(b) The Commission shall:

- (1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;
- (2) Conduct administrative violation proceedings; and
- (3) Assess and collect civil penalties and restitution.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation or agreeing to forgo compensation under this Article shall be guilty of a ~~Class 1 misdemeanor~~. Class H felony.

(d) The Commission shall not be liable in a civil action for any action made in good faith under this section, including the identification and referral of a person for investigation and prosecution for an alleged administrative violation or criminal offense. Any person, including, but not limited to, an attorney, an employee, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers."

Section 2. G.S. 97-94 reads as rewritten:

"§ 97-94. *Employers required to give proof that they have complied with preceding section; penalty for not keeping liability insured; review; liability for compensation; criminal penalties for failure to secure payment of compensation ~~a misdemeanor~~. compensation.*

(a) Every employer subject to the compensation provisions of this Article shall file with the Commission, in form prescribed by it, as often as the Commission determines to be necessary, evidence of its compliance with the provisions of G.S. 97-93 and all other provisions relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for each day of such refusal or neglect, and until the same ceases; and ~~he~~ the employer shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The penalty herein provided may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the penalty shall be made by the Office of the Attorney General.

(c) Any employer required to secure the payment of compensation under this Article who willfully ~~refuses or neglects~~ fails to secure such compensation shall be guilty of a ~~Class 1 misdemeanor~~. Class H felony.

Any employer required to secure the payment of compensation under this Article who neglects to secure the payment of compensation shall be guilty of a Class 1 misdemeanor.

(d) Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, ~~willfully and intentionally refuses or neglects~~ willfully fails to bring the employer in compliance, shall be guilty of a ~~Class 1 misdemeanor and Class H felony~~. Any person who, with the ability and authority to bring an employer in compliance with G.S. 97-93, neglects to bring the employer in compliance, shall be guilty of a Class 1 misdemeanor. Any person who violates this subsection may be assessed a civil penalty by the Commission in an amount up to one hundred percent (100%) of the amount of any compensation due the employer's employees injured during the time the employer failed to comply with G.S. 97-93.

(e) Notwithstanding the provisions of G.S. 97-101, the Commission may suspend collection or remit all or part of ~~the~~ any civil penalty imposed under this section on condition that the employer or person pays the compensation due and complies with G.S. 97-93."

Section 3. This act becomes effective October 1, 1997, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law upon approval of the Governor at 4:07 p.m. on the 1st day of August, 1997.

H.B. 463

CHAPTER 354

AN ACT TO INCREASE THE PERMISSIBLE WEIGHT OF AGRICULTURAL CROPS THAT MAY BE TRANSPORTED ON THE HIGHWAYS FROM THE FIELD TO LOCAL MARKETS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c)(12) reads as rewritten:

"(12) Subsections (b) and (e) of this section do not apply to a vehicle that ~~meets one of the following descriptions~~, (i) is hauling agricultural crops from the farm where they were grown to first market, (ii) is within 35 miles of that farm, (iii) does not operate on an interstate highway or posted bridge while hauling the crops, ~~and does not exceed its registered weight~~; and meets one of the following descriptions:

- a. Is a five-axle combination with a gross weight of no more than ~~88,000~~ 90,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.
- b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.
- c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a

single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law upon approval of the Governor at 4:07 p.m. on the 1st day of August, 1997.

H.B. 1158

CHAPTER 355

AN ACT TO PROVIDE THAT ANTIQUE AIRPLANES SHALL BE VALUED AT NO MORE THAN FIVE THOUSAND DOLLARS FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-277.12. *Antique airplanes.*

(a) For the purpose of this section, the term 'antique airplane' means an airplane that meets all of the following conditions:

- (1) It is registered with the Federal Aviation Administration and is a model year 1954 or older.
- (2) It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.
- (3) It is used only occasionally for other purposes.
- (4) It is used by the owner for a purpose other than the production of income.

(b) Antique airplanes are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. An antique airplane shall be assessed at the lower of its true value or five thousand dollars (\$5,000)."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1998.

In the General Assembly read three times and ratified this the 22nd day of July, 1997.

Became law upon approval of the Governor at 4:08 p.m. on the 1st day of August, 1997.

H.B. 523

CHAPTER 356

AN ACT TO PROVIDE THAT CONFISCATED WEAPONS MAY BE KEPT FOR DEPARTMENTAL USE BY LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.1 reads as rewritten:

"§ 14-269.1. *Confiscation and disposition of deadly weapons.*

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type

referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

- (1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.
- (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.
- (4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.
- (4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.
- (5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.
- (6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 1997.

Became law upon approval of the Governor at 4:10 p.m. on the 1st day of August, 1997.

H.B. 1121

CHAPTER 357

AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE ACTUAL CONTAMINATION, OR THE POSSIBILITY OF CONTAMINATION, HAS IMPEDED REDEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Findings. -- The General Assembly makes the following findings:

- (1) There are abandoned, idle, and underused properties in North Carolina, often referred to as "brownfields", that may have been

or were contaminated by past industrial and commercial activities, but that are attractive locations for redevelopment.

- (2) The reuse, development, redevelopment, transfer, financing, and other use of brownfields is impaired by the potential liability associated with the risk of contamination.
- (3) The safe redevelopment of brownfields would benefit the citizens of North Carolina in many ways, including improving the tax base of local government and creating job opportunities for citizens in the vicinity of brownfields.
- (4) Potential purchasers and developers of brownfields and other parties who have no connection with the contamination of the property, including redevelopment lenders, should be encouraged to provide capital and labor to improve brownfields without undue risk of liability for problems they did not create, so long as the property can be and is made safe for appropriate future use.
- (5) Public and local government involvement in commenting on the safe reuse of brownfields will improve the quality and acceptability of their redevelopment.

Section 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 5. Brownfields Property Reuse Act.

"§ 130A-310.30. Short title.

This Part may be cited as the Brownfields Property Reuse Act of 1997.

"§ 130A-310.31. Definitions.

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

- (1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (2) 'Brownfields agreement' means an agreement between the Department and a prospective developer that meets the requirements of G.S. 130A-310.32.
- (3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21 of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).
- (4) 'Contaminant' means a regulated substance released into the environment.
- (5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation activities at the site comply with generally applicable standards, guidance, or established methods governing contaminants at the

site that are adopted or published by the Commission, the Environmental Management Commission, or the Department.

- (6) 'Environmental contamination' means contaminants at the property requiring remediation and that are to be remediated under the brownfields agreement including, at a minimum, hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.
- (7) 'Local government' means a town, city, or county.
- (8) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (9) 'Potentially responsible party' means a person who is or may be liable for remediation under a remedial program.
- (10) 'Prospective developer' means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property.
- (11) 'Regulated substance' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program other than Part 2A of Article 21A of Chapter 143 of the General Statutes.
- (12) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the Inactive Hazardous Sites Response Act of 1987 under Part 3 of this Article, the Superfund Program under Part 4 of this Article, and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes.
- (13) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.
- (14) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

"§ 130A-310.32. Brownfields agreement.

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

- (1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:
 - a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.

- b. The requirements applicable to any remediation in which the applicant has previously engaged.
- c. Federal and state laws, regulations, and rules for the protection of the environment.

- (2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to current standards.
- (3) There is a public benefit commensurate with the liability protection provided under this Part.
- (4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.
- (5) The prospective developer has complied with or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

- (1) Any remediation to be conducted on the property, including:
 - a. A description of specific areas where remediation is to be conducted.
 - b. The remediation method or methods to be employed.
 - c. The resources that the prospective developer will make available.
 - d. A schedule of remediation activities.
 - e. Applicable remediation standards.
 - f. A schedule and the method or methods for evaluating the remediation.

- (2) Any land-use restrictions that will apply to the brownfields property.
- (3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.
- (4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.
- (5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer.

"§ 130A-310.33. Liability protection.

(a) A prospective developer who enters into a brownfields agreement with the Department and who is complying with the brownfields agreement shall not be held liable for remediation of areas of contaminants identified in the brownfields agreement except as specified in the brownfields agreement, so

long as the activities conducted on the brownfields property by or under the control or direction of the prospective developer do not increase the risk of harm to public health or the environment and the prospective developer is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as to a prospective developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

- (1) Any person under the direction or control of the prospective developer who directs or contracts for remediation or redevelopment of the brownfields property.
 - (2) Any future owner of the brownfields property.
 - (3) A person who develops or occupies the brownfields property.
 - (4) A successor or assign of any person to whom the liability protection provided under this Part applies.
 - (5) Any lender or fiduciary that provides financing for remediation or redevelopment of the brownfields property.
- (b) A person who conducts an environmental assessment or transaction screen on a brownfields property and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in the Notice of Brownfields Property required under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the brownfields property in violation of a land-use restriction shall be liable for remediation to current standards. A prospective developer who completes the remediation or redevelopment required under a brownfields agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation at the brownfields property unless any of the following apply:

- (1) The prospective developer knowingly or recklessly provides false information that forms a basis for the brownfields agreement or that is offered to demonstrate compliance with the brownfields agreement or fails to disclose relevant information about contamination at the brownfields property.
- (2) New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the brownfields property that has not been remediated to current standards, unless the brownfields agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If the brownfields agreement sets maximum concentrations for contaminants, and

new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the brownfields agreement.

- (3) The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the brownfields property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants or in the vicinity of the brownfields property or (ii) the failure of remediation to mitigate risks to the extent required to make the brownfields property fully protective of public health and the environment as planned in the brownfields agreement.
- (4) The Department obtains new information about a contaminant associated with the brownfields property or exposures at or around the brownfields property that raises the risk to public health or the environment associated with the brownfields property beyond an acceptable range and in a manner or to a degree not anticipated in the brownfields agreement. Any person whose use, including any change in use, of the brownfields property causes an unacceptable risk to public health or the environment may be required by the Department to undertake additional remediation measures under the provisions of this Part.
- (5) A prospective developer fails to file a timely and proper Notice of Brownfields Development under this Part.

"§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a

newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 30 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.

(a) In order to reduce or eliminate the danger to public health or the environment posed by a brownfields property being addressed under this

Part, a prospective developer who desires to enter into a brownfields agreement with the Department shall submit to the Department a proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall include a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30, shall include a legal description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance, and shall identify all of the following:

- (1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.
- (2) The type, location, and quantity of regulated substances and contaminants known to exist on the brownfields property.
- (3) Any restrictions on the current or future use of the brownfields property or, with the owner's permission, other property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the brownfields property and that are designated in the brownfields agreement. These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a brownfields property encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(b) After the Department approves and certifies the Notice of Brownfields Property under subsection (a) of this section, a prospective developer who enters into a brownfields agreement with the Department shall file a certified copy of the Notice of Brownfields Property in the register of deeds' office in the county or counties in which the land is located. The prospective developer shall file the Notice of Brownfields Property within 15 days of the prospective developer's receipt of the Department's approval of the notice or the prospective developer's entry into the brownfields agreement, whichever is later.

(c) The register of deeds shall record the certified copy of the notice and index it in the grantor index under the names of the owners of the land, and, if different, also under the name of the prospective developer conducting the redevelopment of the brownfields property.

(d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the brownfields property has been classified and, if appropriate, cleaned up as a brownfields property under this Part.

(e) A Notice of Brownfields Property filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice

be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice of Brownfields Property and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice of Brownfields Property showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Any land-use restriction filed pursuant to this section shall be enforced by any owner of the land. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the brownfields property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields properties remediated under this Part.

"§ 130A-310.36. Appeals.

A decision by the Department as to whether or not to enter into a brownfields agreement including the terms of any brownfields agreement is reviewable under Article 3 of Chapter 150B of the General Statutes.

"§ 130A-310.37. Construction of Part.

(a) This Part is not intended and shall not be construed to:

- (1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. The use of the identified brownfields property and any land-use restrictions in the brownfields agreement shall be consistent with local land-use controls adopted under those statutes.
- (2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of this Chapter, Chapter 143 of the General Statutes, or any other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a brownfields agreement.

- (3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.
 - (4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person on a brownfields property.
 - (5) Affect the right of any person to seek any relief available against any party to the brownfields agreement who may have liability with respect to the brownfields property, except that this Part does limit the relief available against any party to a brownfields agreement with respect to remediation of the brownfields property to the remediation required under the brownfields agreement.
 - (6) Affect the right of any person who may have liability with respect to the brownfields property to seek contribution from any other person who may have liability with respect to the brownfields property and who neither received nor has liability protection under this Part.
 - (7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as a condition to receive program authorization, delegation, primacy, or federal funds.
 - (8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air, or waters of this State on a brownfields property.
 - (9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.
- (b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice of Brownfields Property under this Part or any other action implementing this Part.

"§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.

The Brownfields Property Reuse Act Implementation Account is created as a nonreverting interest-bearing account in the Office of the State Treasurer. The Account shall consist of fees collected under G.S. 130A-310.39, moneys appropriated to it by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account shall be used by the Department to defray a portion of the costs of implementing this Part.

"§ 130A-310.39. Fees.

(a) The Department shall collect the following fees:

- (1) A prospective developer who submits a proposed brownfields agreement for review by the Department shall pay a fee of one thousand dollars (\$1,000).
- (2) A prospective developer who submits a final report certifying completion of remediation under a brownfields agreement shall pay a fee of five hundred dollars (\$500.00).

(b) Fees imposed under this section shall be credited to the Brownfields Property Reuse Act Implementation Account.

"§ 130A-310.40. Legislative reports.

The Department shall prepare and submit to the Environmental Review Commission, concurrently with the report on the Inactive Hazardous Sites Response Act of 1987 required under G.S. 130A-310.10, an evaluation of the effectiveness of this Part in facilitating the remediation and reuse of existing industrial and commercial properties. This evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this Part in addressing such properties. This evaluation shall also include a report on receipts by and expenditures from the Brownfields Property Reuse Act Implementation Account."

Section 3. G.S. 130A-26.1(g) is amended by adding three new subdivisions to read:

- "(5) Provides false information or fails to provide information relevant to a decision by the Department as to whether or not to enter into a brownfields agreement under Part 5 of Article 9 of this Chapter.
- (6) Provides false information or fails to provide information required by a brownfields agreement under Part 5 of Article 9 of this Chapter.
- (7) Provides false information relevant to a decision by the Department pursuant to:
 - a. G.S. 130A-308(b).
 - b. G.S. 130A-310.7(c).
 - c. G.S. 143-215.3(f).
 - d. G.S. 143-215.84(e)."

Section 4. G.S. 130A-308 reads as rewritten:

"§ 130A-308. Continuing releases at permitted facilities. facilities; notification of completed corrective action.

(a) Standards adopted under G.S. 130A-294(c) shall require, and a permit issued after November 8, 1984, and a permit issued under G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by

Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

(b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a corrective action for a release of a hazardous waste or constituents from a solid waste management unit that is a treatment, storage, or disposal facility permitted under G.S. 130A-294(c) has been completed to current standards. A request for a determination that a corrective action at a facility has been completed to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the corrective action at a facility has been completed to current standards, the Department shall issue a written notification that no further corrective action will be required at the facility. The notification shall state that no further corrective action will be required at the facility unless the Department later determines, based on new information or information not previously provided to the Department, that the corrective action at the facility has not been completed to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to take corrective action at a facility to bring the facility into compliance with current standards."

Section 5. G.S. 130A-310.7 reads as rewritten:

"§ 130A-310.7. Action for reimbursement; liability of responsible parties; notification of completed remedial action."

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

- (1) Discharges or deposits; or
- (2) Contracts or arranges for any discharge or deposit; or
- (3) Accepts for discharge or deposit; or
- (4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

- (1) An act of God; or
- (2) An act of war; or
- (3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or
- (4) Any combination of the above causes.

(c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a site that is subject to this Part has been remediated to current standards as provided in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a determination that a site has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated to current standards, the Department shall issue a written notification that no further remediation will be required at the site. The notification shall state that no further remediation will be required at the site unless the Department later determines, based on new information or information not previously provided to the Department, that the site has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the site to current standards."

Section 6. G.S. 143-215.3 is amended by adding a new subsection to read:

"(f) Notification of Completed Remedial Action. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications."

Section 7. G.S. 143-215.84 is amended by adding a new subsection to read:

"(e) Notification of Completed Removal of Prohibited Discharges. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a discharge of oil or a hazardous substance in violation of this Article has been remediated to current standards. A request for a determination that a discharge has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been remediated to current standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the discharge to current standards."

Section 8. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Department of Environment, Health, and Natural Resources shall implement the provisions of this act from funds otherwise available or appropriated to the Department.

Section 9. This act becomes effective 1 October 1997.

In the General Assembly read three times and ratified this the 24th day of July, 1997.

Became law upon approval of the Governor at 4:12 p.m. on the 1st day of August, 1997.

H.B. 251

CHAPTER 358

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9A. Well Contractors Certification Commission.

"§ 143B-301.10. *Definitions.*

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"§ 143B-301.11. *Creation, powers, and duties of the Commission.*

(a) **Creation and Duties.** -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

- (1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.
- (2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall

make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

- (3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"§ 143B-301.12. Membership of Commission.

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

- (1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.
- (2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.
- (3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.
- (4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.
- (5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

(g) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(i) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"Well Contractors Certification.

"§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act.

"§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

- (1) Commission. -- The Well Contractors Certification Commission.
- (2) Department. -- The Department of Environment, Health, and Natural Resources.
- (3) Person. -- A natural person.
- (4) Secretary. -- The Secretary of Environment, Health, and Natural Resources.
- (5) Well contractor. -- A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.
- (6) Well contractor activity. -- The construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"§ 87-98.4. Well contractor certification required; applicability.

(a) Certification Required. -- No well contractor shall perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(b) Applicability. -- This Article does not apply to a person who meets any of the following descriptions:

- (1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.
- (2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting

examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

- (1) The certificate holder voluntarily surrenders the certificate to the Commission.
- (2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

- (1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.
- (2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.
- (3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.
- (4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"§ 87-98.9. Fees; Well Construction Fund.

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred dollars (\$100.00), the annual fee may not exceed two hundred dollars (\$200.00) per year, and the temporary certification fee shall not exceed one hundred dollars (\$100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"§ 87-98.10. Promotion of training.

The Commission and the Secretary may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"§ 87-98.11. Responsibilities of well contractors.

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"§ 87-98.12. Continuing education requirements.

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"§ 87-98.13. Injunctive relief.

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"§ 87-94. Civil penalties.

(a) Any person who violates any provision of this Article, Article, Article 7A of this Chapter, or any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

(b) No penalty shall be assessed until the person alleged to be in violation has been:

- (1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a),
- (2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and
- (3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment or requests remission of the assessment in whole or in part. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment."~~

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens)."~~

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, State shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91 reads as rewritten:

"§ 87-91. Notice- Notice of violation; remedial action order."

(a) Whenever the Environmental Management Commission has reasonable grounds to believe that there has been a violation of this ~~Article~~, ~~Article~~ or any rule or regulation adopted pursuant ~~thereto~~, to this Article, the Environmental Management Commission or Department shall give written notice to the person or persons alleged to be in violation. ~~Such The~~ notice shall identify the provision of this ~~Article~~, ~~or regulation issued hereunder~~, Article or rule adopted pursuant to this Article alleged to be

violated and the facts alleged to constitute such the violation. The Environmental Management Commission may also issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action must be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

~~(b) Such Department shall serve the notice and any order requiring remedial action on the person alleged to be in violation, shall be served on the person by sending the same to such person by registered or certified mail to his last known post office address or by personal service by an agent or employee of the Department of Environment, Health, and Natural Resources, and may be accompanied by an order of the Environmental Management Commission requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this Article and the rules issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Environmental Management Commission may appoint a time and place for such person to be heard. Notice by the Environmental Management Commission or Department may be given to any person upon whom a summons may be served in accordance with the provisions of law governing civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice. The notice may be served by any means authorized under G.S. 1A-1, Rule 4."~~

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

- (1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.
- (2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.
- (3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of this act, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who, since 1 July 1992, has been actively and continuously engaged in well contractor activity and who has been:

- (1) Continuously registered with the Department as required by G.S. 143-355(e), or
- (2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee prior to 1 January 1999. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

Section 10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

In the General Assembly read three times and ratified this the 24th day of July, 1997.

Became law upon approval of the Governor at 12:50 p.m. on the 4th day of August, 1997.

H.B. 146

CHAPTER 359

AN ACT TO ALLOW THE CITY OF JACKSONVILLE TO REQUIRE
SIDEWALK IMPROVEMENTS THROUGH THE SITE PLAN
REVIEW PROCESS UNDER THE AUTHORITY OF THE CITY
ZONING ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. The city council may require sidewalk improvements for all development that is subject to be reviewed under the site plan review provisions of the city zoning ordinance.

Section 2. This act applies to the City of Jacksonville only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 1997.

Became law on the date it was ratified.

H.B. 844

CHAPTER 360

AN ACT TO AMEND THE CHARTER OF THE CITY OF REIDSVILLE
TO RESTRICT ANNEXATION OF THE CITY BEYOND A LINE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Reidsville, being Chapter 957 of the Session Laws of 1989, is amended by adding a new section to read:

"Section 1.4. **Annexation Restricted.** The City may not annex under Article 4A of Chapter 160A of the General Statutes any territory west of the following line:

Beginning at a point in the centerline of the Iron Works Road; said point being westerly and 400 feet perpendicular to the western right-of-way of Woolen Store Road Extended to the centerline of the Iron Works Road; thence from said point northerly about 430 feet to a point; said point being 400 feet perpendicular to and northerly from the northern right-of-way of the Iron Works Road; thence from said point in a generally northeasterly direction and being 400 feet parallel to the northern right-of-way of the Iron Works Road and Sandy Cross Road to a point said point being 400 feet perpendicular to and northwesterly from the northwestern right-of-way of Sandy Cross Road and being in the southwestern line of the Calvary Baptist Church extend northwesterly about 460 feet, thence from said point southeasterly with the extension of said line and the southwestern line of Calvary Baptist Church about 610 feet to a point, said point being the southwest corner of Calvary Baptist Church, thence from said point northeasterly with the southeastern line of Calvary Baptist Church about 410 feet to a point, said point being the southeast corner of Calvary Baptist Church, thence from said point northeasterly with said line extended about 50 feet to the centerline of N.C. Hwy. 65 and 87, thence northwesterly with the centerline of N.C. Hwy. 65 and 87 about 760 feet to a point, thence from said point in a northeasterly direction about 450 feet to a point; said point being 400 feet perpendicular to and northeasterly from the northern right-of-way of NC Hwy. 65 and 87 and 400 feet perpendicular to and northwesterly from the northern right-of-way of Wentworth Street; thence from said point 400 feet parallel to the northern right-of-way of Wentworth Street and running in a generally northeasterly direction to a point; said point being about 200 feet east of Setliff Road and 400 feet north of Wentworth Street; thence in a northerly direction about 2100 feet to the northeast corner of lot 7 of the Setliff Glenn Subdivision (MB 28-275); said point located about 850 feet east of the cul-de-sac at the end of Setliff Road; thence northeasterly about 2030 feet to a point at the corner of the University Estates Subdivision; thence easterly about 2000 feet along the southeasterly boundary line of the University Estates Subdivision to a point near Cedar Lane which intersects the boundary of the existing Wentworth Fire District boundary line; thence northerly along the Wentworth Fire District line about 5500 feet to a point; said point being about 400 feet south of the intersection of NC 1992 and Berrymore Road; thence parallel to and 400 feet from and on the southeast side of Berrymore Road to a point; said point being on NC 14 about 400 feet southeast of the intersection of Berrymore Road and NC 14."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 1997.

Became law on the date it was ratified.

S.B. 585

CHAPTER 361

AN ACT TO AUTHORIZE THE CITY OF LUMBERTON TO LEVY AN ADDITIONAL, TEMPORARY ROOM OCCUPANCY TAX, TO MODIFY THE PURPOSES FOR WHICH THE LUMBERTON ROOM OCCUPANCY TAX CAN BE USED, AND TO AUTHORIZE THE CITY OF SHELBY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 1028 of the 1983 Session Laws and Chapter 935 of the 1987 Session Laws, as it relates to the City of Lumberton only, is recodified and rewritten as Section 2 of this act.

Section 2. Lumberton Occupancy Tax. (a) Authorization and scope. The Lumberton City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Lumberton City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Lumberton City Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section. The authorization to levy this tax expires August 1, 2000.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this section as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of first three percent (3%) tax revenue. The City of Lumberton shall, on a quarterly basis, remit the net proceeds of the first three percent (3%) occupancy tax authorized in subsection (a) of this section to the Lumberton Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Lumberton and shall use the remainder for tourism-related expenditures. Of the funds designated for tourism-related expenditures, the Authority shall remit the first one hundred fifteen thousand dollars (\$115,000) to the Carolina Civic Center Foundation, Inc., for tourism-related expenditures. The Authority may use no more than

twenty-three percent (23%) of the funds remitted to it under this subsection for salaries in carrying out these purposes and may use no more than ten percent (10%) of the funds remitted to it under this subsection for other administrative costs in carrying out these purposes.

(e) Distribution and use of additional three percent (3%) tax revenue. The City of Lumberton shall use the net proceeds of the additional tax authorized in subsection (b) of this section for tourism-related expenditures and other public purposes.

(f) The following definitions apply in this section:

- (1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed four percent (4%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a city by attracting tourists or business travelers to the city. The term includes tourism-related capital expenditures.

Section 3. Lumberton Tourism Development Authority. (a) Appointment and membership. When the Lumberton City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the members' terms of office and for the filling of vacancies on the Authority.

The Authority shall have eight members appointed by the city council and two ex officio, nonvoting members, as follows:

- (1) Four individuals who own or operate a hotel or motel in the city.
- (2) Four individuals who are currently active in the promotion of travel and tourism in the city.
- (3) The Finance Officer for Lumberton, to serve ex officio.
- (4) A member of the Lumberton City Council, designated by the city council, to serve ex officio.

The Lumberton City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 2 of this act for the purposes provided in Section 2 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Lumberton City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Lumberton City Council may require.

Section 4. Uniform City Occupancy Tax Provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the Cities of Lumberton and Shelby.

Section 5. Shelby Occupancy Tax. (a) Authorization and scope. The City Council of the City of Shelby may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. The city may contract with Cleveland County for tax collection services relating to the occupancy tax levied under this section. Such a contract shall be under terms and conditions agreed to by the city and the county and may be modified from time to time. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Use of tax revenue. The City of Shelby shall use at least two-thirds of the net proceeds of the occupancy tax to promote travel and tourism in the city and shall use the remainder for tourism-related expenditures. The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the city, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the city, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a city by attracting tourists or business travelers to the city. The term includes tourism-related capital expenditures.

Section 6. Section 2(d) of this act becomes effective August 1, 1997, and applies to taxes that accrue on or after that date. The remainder of this

act is effective when this act becomes law. Sections 2(b) and 2(e) of this act are repealed effective August 1, 2000.

In the General Assembly read three times and ratified this the 5th day of August, 1997.

Became law on the date it was ratified.

S.B. 975

CHAPTER 362

AN ACT TO REWRITE THE LAWS CONCERNING EMPLOYER AND EMPLOYER GROUP WORKERS' COMPENSATION SELF-INSURANCE AND CODIFY RELATED ADMINISTRATIVE RULES AND TO PROVIDE FOR GUIDELINES FOR PERSONS AND ENTITIES THAT ADMINISTER OR SERVICE WORKERS' COMPENSATION BUSINESS FOR SELF-INSURED EMPLOYERS AND EMPLOYER GROUPS.

The General Assembly of North Carolina enacts:

Section 1. The heading of Article 47 of Chapter 58 of the General Statutes reads as rewritten:

~~"North Carolina Health Care Excess Liability Fund.~~
Workers' Compensation Self-Insurance."

Section 2. G.S. 58-47-1, 58-47-5, 58-47-10, 58-47-15, 58-47-20, 58-47-25, 58-47-30, 58-47-35, 58-47-40, 58-47-45, and 58-47-50 are repealed.

Section 3. Article 47 of Chapter 58 of the General Statutes is amended by adding the following:

"Part 1. Employer Groups.

"§ 58-47-60. Definitions.

As used in this Part:

- (1) 'Act' means the Workers' Compensation Act in Article 1 of Chapter 97 of the General Statutes, as amended.
- (2) 'Affiliate' has the same meaning as in G.S. 58-19-5(1).
- (3) 'Annual statement filing' means the most recent annual filing made with the Commissioner under G.S. 58-2-165.
- (4) 'Board' means the board of trustees or other governing body of a group.
- (5) 'Books and records' means all files, documents, and databases in a paper form, electronic medium, or both.
- (6) 'Control' means "control" as defined in G.S. 58-19-5(2).
- (7) 'GAAP financial statement' means a financial statement as defined by generally accepted accounting principles.
- (8) 'Group' means two or more employers who agree to pool their workers' compensation liabilities under the Act and are licensed under this Part.
- (9) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a person is insolvent or, although not financially impaired or insolvent, is unlikely to be able to meet obligations for known claims and reasonably

anticipated claims or to pay other obligations in the normal course of business.

(10) 'Member' means an employer that participates in a group.

(11) 'Qualified actuary' means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, and is in compliance with G.S. 58-2-171.

(12) 'Rate' means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and variations in loss experience, before any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

(13) 'Service company' means an entity that has contracted with an employer or group for the purpose of providing any services related to claims adjustment, loss control, or both.

(14) 'Third-party administrator' or 'TPA' means a person engaged by a board to execute the policies established by the board and to provide day-to-day management of the group. 'Third-party administrator' or 'TPA' does not mean:

a. An employer acting on behalf of its employees or the employees of one or more of its affiliates.

b. An insurer that is licensed under this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and under the laws of a state in which the insurer is licensed to write insurance.

c. An agent or broker who is licensed by the Commissioner under Article 33 of this Chapter whose activities are limited exclusively to the sale of insurance.

d. An adjuster licensed by the Commissioner under Article 33 of this Chapter whose activities are limited to adjustment of claims.

e. An individual who is an officer, a member, or an employee of a board.

(15) 'Underwriting' means the process of selecting risks and classifying them according to their degrees of insurability so that the appropriate rates may be assigned. The process also includes rejection of those risks that do not qualify.

"§ 58-47-65. Licensing; qualification for approval.

(a) No group shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Part.

(b) An applicant for a license shall file with the Commissioner the information required by subsection (f) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. The applicant shall furnish to the Commissioner satisfactory proof of the proposed group's financial ability, through its members, to comply with the

Act. No application is complete until the Commissioner has received all required information.

(c) The group shall comprise two or more employers who are members of and are sponsored by a single bona fide trade or professional association. The association shall (i) comprise members engaged in the same or substantially similar business or profession within the State, (ii) have been incorporated in North Carolina, (iii) have been in existence for at least five years before the date of application to the Commissioner to form a group, and (iv) submit a written determination from the Internal Revenue Service that it is exempt from taxation under 26 U.S.C. § 501(c). This subsection does not apply to a group that was organized and approved under North Carolina law before July 1, 1995.

(d) Only an applicant whose members' employee base is actuarially sufficient in numbers and provides an actuarially appropriate spreading of risk may apply for a license. The Commissioner shall consider (i) the financial strength and liquidity of the applicant relative to its ability to comply with the Act, (ii) the applicant's criteria and procedures regarding the review and monitoring of members' financial strength, (iii) reliability of the financial information, (iv) workers' compensation loss history, (v) underwriting guidelines, (vi) claims administration, (vii) excess insurance or reinsurance, and (viii) access to excess insurance or reinsurance.

(e) Before issuing a license to any applicant, the Commissioner shall require, in addition to the other requirements provided by law, that the applicant file an affidavit signed by the association's board members that it has not violated any of the applicable provisions of this Part or the Act during the last 12 months, and that it accepts the provisions of this Part and the Act in return for the license.

(f) The license application shall comprise the following information:

- (1) Biographical affidavits providing the education, prior occupation, business experience, and other supplementary information submitted for each promoter, incorporator, director, trustee, proposed management personnel, and other persons similarly situated.
- (2) A forecast for a five-year period based on the initial capitalization of the proposed group and its plan of operation. The forecast shall be prepared by a certified public accountant, a qualified actuary, or both, be in sufficient detail for a complete analysis to be performed, and be accompanied by a list of the assumptions utilized in making the forecast.
- (3) An individual application, under G.S. 58-47-125, of each member applying for coverage in the proposed group on the inception date of the proposed group, with a current GAAP financial statement of the member. The financial statements are confidential, but the Commissioner may use them in any judicial or administrative proceeding.
- (4) A breakdown of all forecasted administrative expenses for the proposed group's fiscal year in a dollar amount and as a percentage of the estimated annual premium.

- (5) The proposed group's procedures for evaluating the current and continuing financial strength of members.
- (6) Evidence of the coverage required by G.S. 58-47-95.
- (7) Demonstration provided by the board, satisfactory to the Commissioner, that the proposed group's member employee base is actuarially sufficient in numbers and provides an actuarially appropriate spreading of risk.
- (8) An assessment plan under G.S. 58-47-135(a).
- (9) A listing of the estimated premium to be developed for each member individually and in total for the proposed group. Payroll data for each of the three preceding years shall be furnished by risk classification.
- (10) An executed agreement by each member showing the member's obligation to pay to the proposed group not less than twenty-five percent (25%) of the member's estimated annual premium not later than the first day of coverage afforded by the proposed group.
- (11) Composition of the initial board.
- (12) An indemnity agreement on a form prescribed by the Commissioner.
- (13) Proof, satisfactory to the Commissioner, that either the applicant has within its own organization ample facilities and competent personnel to service its program for underwriting, claims, and industrial safety engineering, or that the applicant will contract for any of these services. If the applicant is to perform any servicing, biographical affidavits of those persons who will be responsible for or performing servicing shall be included with the information in subdivision (1) of this subsection. If a group contracts with a service company or TPA to administer and adjust claims, the group shall provide proof of compliance with the other provisions of this Part.
- (14) A letter stipulating the applicant's acceptance of membership in the North Carolina Self-Insurance Guaranty Association under Article 4 of Chapter 97 of the General Statutes.
- (15) Any other specific information the Commissioner considers relevant to the organization of the proposed group.

(g) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to deposit with the Commissioner cash or securities acceptable to the Commissioner.

"§ 58-47-70. License denial; termination; revocation; restrictions.

(a) If the Commissioner denies a license, the Commissioner shall inform the applicant of the reasons for the denial. The Commissioner may issue a license to an applicant that remedies the reasons for a denial within 60 days after the Commissioner's notice. The Commissioner may grant additional time to an applicant to remedy any deficiencies in its application. A request for an extension of time shall be made in writing by the applicant within 30 days after the Commissioner's notice. If the applicant fails to remedy the reasons for the denial, the application shall be withdrawn or denied.

(b) A group shall not terminate its license or cease the writing of renewal business without obtaining prior written approval from the Commissioner. The Commissioner shall not grant the request of any group to terminate its license unless the group has closed or reinsured all of its incurred workers' compensation obligations and has settled all of its other legal obligations, including known and unknown claims and associated expenses.

(c) No group shall transfer its workers' compensation obligations under an assumption reinsurance agreement without complying with Part 2 of Article 10 of this Chapter.

(d) Every group is subject to Article 19 of this Chapter. No group shall merge with another group unless both groups are engaged in the same or a similar type of business.

"§ 58-47-75. Reporting and records.

(a) As used in this section:

- (1) 'Audited financial report' has the same meaning as in the NAIC Model Rule Requiring Annual Audited Financial Reports, as specified in G.S. 58-2-205.
- (2) 'Duplicate record' means a counterpart produced by the same impression as the original record, or from the same matrix, or by mechanical or electronic rerecording or by chemical reproduction, or by equivalent techniques, such as imaging or image processing, that accurately reproduce the original record.
- (3) 'Original record' means the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it, in the normal and ordinary course of business, or data stored in a computer or similar device, the printout or other output readable by sight, shown to reflect the data accurately. An 'original' of a photograph includes the negative or any print from the negative.

(b) Each group shall file with the Commissioner the following:

- (1) A statement in accordance with G.S. 58-2-165.
- (2) An audited financial report.
- (3) Annual payroll information within 90 days after the close of its fiscal year. The report shall summarize the payroll by annual amount paid and by classifications using the rules, classifications, and rates set forth in the most recently approved Workers' Compensation and Employers' Liability Insurance Manual governing audits of payrolls and adjustments of premiums. Each group shall maintain true and accurate payroll records. The payroll records shall be maintained to allow for verification of the completeness and accuracy of the annual payroll report.

(c) Each group shall make its financial statement and audited financial report available to its members upon request.

(d) All records shall be maintained by the group for the years during which an examination under G.S. 58-2-131 has not yet been completed.

(e) All records that are required to be maintained by this section shall be either original or duplicate records.

(f) If only duplicate records are maintained, the following requirements apply:

- (1) The data shall be accessible to the Commissioner in legible form, and legible, reproduced copies shall be available.
- (2) Before the destruction of any original records, the group in possession of the original records shall:
 - a. Verify that the records stored consist of all information contained in the original records, and that the original records can be reconstructed therefrom in a form acceptable to the Commissioner; and
 - b. Implement disaster preparedness or disaster recovery procedures that include provisions for the maintenance of duplicate records at an off-site location.
- (3) Adequate controls shall be established with respect to the transfer and maintenance of data.
- (g) Each group shall maintain its records under G.S. 58-7-50, G.S. 58-7-55, and the Act.

(h) All books of original entry and corporate records shall be retained by the group or its successor for a period of 15 years after the group ceases to exist.

"§ 58-47-80. Assets and invested assets.

Funds shall be held and invested by the board under G.S. 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-177, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-195, 58-7-197, and 58-7-200.

"§ 58-47-85. Surplus requirements.

Every group shall maintain minimum surplus under one of the options in subdivision (1), (2), or (3) of this section:

- (1) Maintain minimum surplus in accordance with Article 12 of this Chapter. A group organized and authorized before the effective date of this section shall comply with this section under the following schedule:
 - a. Forty percent (40%) of the surplus, in accordance with Article 12, by January 1, 1999.
 - b. Fifty-five percent (55%) of the surplus, in accordance with Article 12, by January 1, 2000.
 - c. Seventy percent (70%) of the surplus, in accordance with Article 12, by January 1, 2001.
 - d. Eighty-five percent (85%) of the surplus, in accordance with Article 12, by January 1, 2002.
 - e. One hundred percent (100%) of the surplus, in accordance with Article 12, by January 1, 2003.

The Commissioner shall not approve any dividend request that results in a surplus that is less than one hundred percent (100%) of the minimum surplus required by Article 12 of this Chapter.

- (2) Maintain minimum surplus at an amount equal to ten percent (10%) of the group's total undiscounted outstanding claim liability, according to the group's annual statement filing, or such other amount as the Commissioner prescribes based on, but not limited to, the financial condition of the group and the risk retained by the group. In addition, the group shall:

- a. Maintain specific excess insurance or reinsurance that provides the coverage limits in G.S. 58-47-95(a). The group shall retain no specific risk greater than five percent (5%) of the group's total annual earned premium according to the group's annual statement filing.
 - b. Maintain aggregate excess insurance or reinsurance with a coverage limit being the greater of two million dollars (\$2,000,000) or twenty percent (20%) of the group's annual earned premium, according to the group's annual statement filing. The aggregate excess attachment point shall be one hundred ten percent (110%) of the annual earned premium, according to the group's annual statement filing. The required attachment point shall be reduced by each point, or fraction of a point, that a group's expense ratio exceeds thirty percent (30%). Conversely, the required attachment point may be increased by each point, or fraction of a point, that a group's expense ratio is less than thirty percent (30%), but in no event shall the attachment point be greater than one hundred fifteen percent (115%) of the annual earned premium.
 - c. Adopt a policy whereby every member:
 - 1. Pays a deposit to the group of twenty-five percent (25%) of the member's estimated annual earned premium, or another amount that the Commissioner prescribes based on, but not limited to, the financial condition of the group and the risk retained by the group; or
 - 2. Once every year files with the group the member's most recent year-end balance sheet, compiled by an independent certified public accountant. The balance sheet shall demonstrate that the member's financial position does not show a deficit equity and is appropriate for membership in the group. At the request of the Commissioner, the group shall make these filings available for review. These filings shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding.
- (3) Maintain minimum surplus at an amount equal to three hundred thousand dollars (\$300,000). The group shall immediately assess its members if, at any time, the group's surplus is less than the minimum surplus amount. In addition, the group shall maintain:
- a. Specific excess insurance or reinsurance that provides coverage limits pursuant to G.S. 58-47-95(a). The group shall retain no specific risk greater than five percent (5%) of the group's total annual earned premium according to the group's annual statement filing.
 - b. Aggregate excess insurance or reinsurance with a coverage limit being the greater of two million dollars (\$2,000,000) or twenty percent (20%) of the group's annual earned premium, according to the group's annual statement filing. The

aggregate excess attachment point shall be one hundred ten percent (110%) of the annual earned premium, according to the group's annual statement filing. The required attachment point shall be reduced by each point, or fraction of a point, that a group's expense ratio exceeds thirty percent (30%). Conversely, the required attachment point may be increased by each point, or fraction of a point, that a group's expense ratio is less than thirty percent (30%), but in no event shall the attachment point be greater than one hundred fifteen percent (115%) of the annual earned premium.

The Commissioner may require different levels, or waive the requirement, of specific and aggregate excess loss coverage consistent with the market availability of excess loss coverage, the group's claims experience, and the group's financial condition.

"§ 58-47-90. Deposits.

(a) Each group shall deposit with the Commissioner an amount equal to ten percent (10%) of the group's total annual earned premium, according to the group's annual statement filing, but not less than six hundred thousand dollars (\$600,000), or another amount that the Commissioner prescribes based on, but not limited to, the financial condition of the group and the risk retained by the group.

(b) G.S. 58-5-1, 58-5-20, 58-5-25, 58-5-30, 58-5-35, 58-5-40, 58-5-63, 58-5-75, 58-5-80, 58-5-90(a) and (c), 58-5-95, 58-5-110, 58-5-115, and 58-5-120 apply to groups.

(c) A group organized and authorized before January 1, 1998, has until January 1, 2001, to comply with subsection (b) of this section. However, a dividend request shall not be approved by the Commissioner until the group has replaced its surety bonds with the deposit required by subsection (b) of this section.

(d) No judgment creditor, other than a claimant entitled to benefits under the Act, may levy upon any deposits made under this section.

(e) Surety bonds shall be in a form prescribed by the Commissioner and issued by an insurer authorized by the Commissioner to write surety business in North Carolina.

(f) Any surety bond may be exchanged or replaced with another surety bond that meets the requirements of this section if 90 days' advance written notice is provided to the Commissioner. An endorsement to a surety bond shall be filed with the Commissioner within 30 days after its effective date.

(g) If a group ceases to self-insure, dissolves, or transfers its workers' compensation obligations under an assumption reinsurance agreement, the Commissioner shall not release any deposits until the group has fully discharged all of its obligations under the Act.

"§ 58-47-95. Excess insurance and reinsurance.

(a) Each group, on or before its effective date of operation and on a continuing basis thereafter, shall maintain specific and aggregate excess loss coverage through an insurance policy or reinsurance contract. Groups shall maintain limits and retentions commensurate with their exposures. A group's retention shall be the lowest retention suitable for groups with similar exposures and annual premium. The Commissioner may require

different levels, or waive the requirement, of specific and aggregate excess loss coverage consistent with the market availability of excess loss coverage, the group's claims experience, and the group's financial condition.

(b) Any excess insurance policy or reinsurance contract under this section shall be issued by a licensed insurance company, an approved surplus lines insurance company, or an accredited reinsurer, and shall:

- (1) Provide for at least 30 days' written notice of cancellation by certified mail, return receipt requested, to the group and to the Commissioner.
- (2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the group and to the Commissioner.

(c) Every group shall provide to the Commissioner evidence of its excess insurance or reinsurance coverage, and any amendments, within 30 days after their effective dates. Every group shall, at the request of the Commissioner, furnish copies of any excess insurance policies or reinsurance contracts and any amendments.

"§ 58-47-100. Examinations.

G.S. 58-2-131, 58-2-132, and 58-2-133 apply to groups.

"§ 58-47-105. Dividends and other distributions.

(a) Group dividends and other distributions shall be made in accordance with G.S. 58-7-130, 58-8-25(b), and 58-19-30. A group shall be in compliance with this Part before payment of dividends or other distributions to its members. No group shall pay dividends or other distributions to its members until two years after the group's licensing date.

(b) Payment of dividends to the members of any group shall not be contingent upon the maintenance or continuance of membership in the group.

"§ 58-47-110. Premium rates.

(a) As used in this section:

- (1) 'Bureau' means the North Carolina Rate Bureau in Article 36 of this Chapter.
- (2) 'Expenses' means that portion of a premium rate attributable to acquisition, field supervision, collection expenses, and general expenses, as determined by the group.
- (3) 'Multiplier' means a group's determination of the expenses, other than loss expense and loss adjustment expense, associated with writing workers' compensation and employers' liability insurance, which shall be expressed as a single nonintegral number to be applied equally and uniformly to the prospective loss costs approved by the Commissioner in making rates for each classification of risks utilized by that group.
- (4) 'Prospective loss costs' means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit and that is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and forecasted through trending to a future point in time.

- (5) 'Supplementary rating information' means any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, rate-related underwriting rule, experience rating plan, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

(b) Rates and the effective date shall be submitted by the group to the Commissioner for prior approval in the form of a rate filing. The rate filing:

- (1) Shall be on a form prescribed by the Commissioner and shall be supported by competent analysis, prepared by an actuary who is a member in good standing of the Casualty Actuarial Society or the American Academy of Actuaries, demonstrating that the resulting rates meet the standards of not being excessive, inadequate, or unfairly discriminatory;
- (2) Shall have the final rates and the effective date determined independently and individually by the group;
- (3) Shall have manual rates that are the combination of the prospective loss costs and the multiplier;
- (4) Shall file any other information that the group considers relevant and shall provide any other information requested by the Commissioner;
- (5) Shall be considered complete when the required information and all additional information requested by the Commissioner is received by the Commissioner. When a filing is not accompanied by the information required under this section, the Commissioner shall inform the group within 30 days after the initial filing that the filing is incomplete and shall note the deficiencies. If information required by a rate filing or requested by the Commissioner is not maintained or cannot be provided, the group shall certify that to the Commissioner;
- (6) May include deviations to the prospective loss cost based on the group's anticipated experience. Sufficient documentation supporting the deviations and the impact of the deviation shall be included in the rate filing. Expense loads, whether variable, fixed, or a combination of variable and fixed, may vary by individual classification or grouping. Each filing that varies the expense load by class shall specify the expense factor applicable to each class and shall include information supporting the justification for the variation;
- (7) Shall include any proposed use of a premium-sized discount program, a schedule rating program, a small deductible credit program or an expense constant or minimum premium, and the use shall be supported in the rate filing; and
- (8) Shall be deemed approved, unless disapproved by the Commissioner in writing, within 60 days after the rate filing is made in its entirety. A group is not required to refile rates previously approved until two years after the effective date of this Part.

(c) At the time of the rate filing, a group may request to have its approved multiplier remain in effect and continue to use either the prospective loss cost filing in effect at the time of the rate filing or the prospective loss cost filing in effect at the time of the filing, along with all other subsequent prospective loss cost filings, as approved.

(d) To the extent that a group's manual rates are determined solely by applying its multiplier, as presented and approved in the rate filing, to the prospective loss costs contained in the Bureau's reference filing and printed in the Bureau's rating manual, the group need not develop or file its final rate pages with the Commissioner. If a group chooses to print and distribute final rate pages for its own use, based solely upon the application of its filed prospective loss costs, the group need not file those pages with the Commissioner. If the Bureau does not print the prospective loss costs in its manual, the group shall submit its rates to the Commissioner.

(e) If a new filing of rules, relativities, and supplementary rating information is filed by the Bureau and approved:

- (1) The group shall not file anything with the Commissioner if the group decides to use the revisions as filed, with the effective date as filed together with the prospective loss multiplier on file with the Commissioner.
- (2) The group shall notify the Commissioner of its effective date before the Bureau filing's effective date if the group decides to use the revisions as filed but with a different effective date.
- (3) The group shall notify the Commissioner before the Bureau filing's effective date if the group decides not to use the revision or revisions.
- (4) The group shall file the modification with the Commissioner, for approval, specifying the basis for the modification and the group's proposed effective date if different from the Bureau filing's effective date, if the group decides to use the revision with deviations.

(f) Every group shall adhere to the uniform classification plan and experience rating plan filed by the Bureau.

(g) Groups shall maintain data in accordance with the uniform statistical plan approved by the Commissioner.

(h) Each group shall submit annually a rate certification, signed by an actuary who is a member in good standing of the Casualty Actuarial Society or the American Academy of Actuaries, which states that the group's prospective rates are not excessive, inadequate, or unfairly discriminatory. The certification is to accompany the group's rate filing. If a rate filing is not required, the actuarial rate certification is to be submitted by the end of the calendar year.

"§ 58-47-115. Premium payment requirements.

Groups shall collect members' premiums for each policy period in a manner so that at no time the sum of a member's premium payments is less than the total estimated earned premium for that member.

"§ 58-47-120. Board; composition, powers, duties, and prohibitions.

(a) Each group shall be governed by a board or other governing body comprising no fewer than three persons, elected for stated terms of office,

and subject to the Commissioner's approval. All board members shall be residents of this State or members of the group. At least two-thirds of the board shall comprise employees, officers, or directors of members; provided that the Commissioner may waive this requirement for good cause. The group's TPA, service company, or any owner, officer, employee, or agent of, or any other person affiliated with, the TPA or service company shall not serve as a board member. The board shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group.

(b) The board shall be responsible for the following:

- (1) Maintaining minutes of its meetings and making the minutes available to the Commissioner.
- (2) Providing for the execution of its policies, including providing for day-to-day management of the group and delineating in the minutes of its meetings the areas of authority it delegates.
- (3) Designating a chair to facilitate communication between the group and the Commissioner.
- (4) Adopting a policy of reimbursement from the assets of the group for out-of-pocket expenses incurred as board members, if so desired.

(c) The board shall not:

- (1) Be compensated by the group, TPA, or service company except for out-of-pocket expenses incurred as board members.
- (2) Extend credit to members for payment of a premium, except under payment requirements set forth in this Part.
- (3) Borrow any money from the group or in the name of the group, except in the ordinary course of business, without first informing the Commissioner of the nature and purpose of the loan and obtaining the Commissioner's approval.

(d) The board shall adopt bylaws to govern the operation of the group. The bylaws shall comply with the provisions of this section and shall include:

- (1) The method for selecting the board members, including terms of office.
- (2) The method for amending the bylaws and the plans of operation and assessment.
- (3) The method for establishing and maintaining the group.
- (4) The procedures and requirements for dissolving the group.

(e) Each group shall file a copy of its bylaws with the Commissioner. Any changes to the bylaws shall be filed with the Commissioner no later than 30 days before their effective dates. The Commissioner may order the group to rescind or revoke any bylaw if it violates this section or any other applicable law or administrative rule.

(f) The board shall adopt and administer a plan of operation to assure the fair, reasonable, and equitable administration of the group. All members shall comply with the plan. The plan shall comply with this section and include:

- (1) Procedures for administering the assets of the group.
- (2) A plan of assessment.

- (3) Loss control services to be provided to the members.
 - (4) Rules for payment and collection of premium.
 - (5) Basis for dividends.
 - (6) Reimbursement of board members.
 - (7) Intervals for meetings of the board, which shall be held at least semiannually.
 - (8) Procedures for the maintenance of records of all transactions of the group.
 - (9) Procedures for the selection of the board members.
 - (10) Additional provisions necessary or proper for the execution of the powers and duties of the group.
 - (11) Qualifications for group membership, including underwriting guidelines and procedures to identify members that are in hazardous financial conditions.
- (g) The plan and any amendments become effective upon approval in writing by the Commissioner.

(h) Each year the board shall review:

- (1) The performance evaluation of the TPA or service company, if applicable.
- (2) Loss control services.
- (3) Investment policies.
- (4) Delinquent debts.
- (5) Membership cancellation procedures.
- (6) Admission of new members.
- (7) Claims administration and reporting.
- (8) Payroll audits and findings.
- (9) Excess insurance or reinsurance coverage.

The board's findings from its review shall be documented in the board's minutes.

(i) G.S. 58-7-140 applies to board members.

"§ 58-47-125. Admission and termination of group members.

(a) Prospective group members shall submit applications for membership to the board. The board, a designated employee of the group, or TPA shall approve an application for membership under the bylaws of the group. Members shall have bona fide offices in this State and members' employees shall be primarily engaged in business activities within this State. Members shall receive certificates of coverage from the board on a form acceptable to the Commissioner.

(b) The group shall make available to the Commissioner properly executed applications and indemnity agreements for all members, on forms prescribed by the Commissioner. If the applications and indemnity agreements are not executed properly and maintained, the Commissioner may order the group to cease writing all new business until all of the agreements are executed properly and obtained.

(c) Members may elect to terminate their participation in a group and may be canceled by the group under G.S. 97-99 and the bylaws of the group.

"§ 58-47-130. Disclosure.

Every group through its board, TPA, service company, agents, or other representatives shall require, before accepting an application, each applicant for membership to acknowledge in writing that the applicant has received the following:

- (1) A document disclosing that the members are jointly and severally liable for the obligations of the group.
- (2) A copy of the group's plan of assessment.
- (3) The amount of specific and aggregate stop loss or excess insurance or reinsurance carried by the group, the amount and kind of risk retained by the group, and the name and rating of the insurer providing stop loss, excess insurance, or reinsurance.

"§ 58-47-135. Assessment plan and indemnity agreement.

(a) Each group shall establish an assessment plan that provides for a reasonable and equitable mechanism for assessing its members. The plan and any amendments shall be approved by the Commissioner. The plan shall include descriptions of the circumstances that initiate an assessment, basis, and allocation to members of the amount being assessed, and collection of the assessment.

(b) The board shall notify the Commissioner of an assessment no fewer than 60 days before an assessment.

(c) The Commissioner shall impose an assessment on members if the board or third-party administrator fails to take action to correct a hazardous financial condition.

(d) Every group shall file an indemnity agreement on a form prescribed by the Commissioner, which jointly and severally binds the members of the group to comply with the provisions of the act and pay obligations imposed by the Act.

"§ 58-47-140. Other provisions of this Chapter.

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-3-125, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, and Articles 13, 19, 30, 33, 34, and 63 of this Chapter apply to groups.

"Part 2. Third-Party Administrators and Service Companies
for Individual and Group Self-Insurers.

"§ 58-47-150. Definitions.

As used in this Part:

- (1) 'Books and records' means all files, documents, and databases in a paper form, electronic medium, or both.
- (2) 'Self-insurer' means a group of employers licensed by the Commissioner under Part 1 of this Article or a single employer licensed by the Commissioner under Article 5 of Chapter 97 of the General Statutes to retain its liability under the Workers' Compensation Act and to pay directly the compensation in the amount and manner and when due as provided for in the Act.
- (3) 'Service company' means an entity that has contracted with a self-insurer for the purpose of providing any services related to claims adjustment, loss control, or both.
- (4) 'Third-party administrator' or 'TPA' means a person engaged by a self-insurer to execute the policies established by the self-

insurer and to provide day-to-day management of the self-insurer.
'Third-Party Administrator' and 'TPA' does not mean:

- a. A self-insurer acting on behalf of its employees or the employees of one or more of its affiliates.
- b. An insurer that is licensed under this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and under the laws of a state in which the insurer is licensed to write insurance.
- c. An agent or broker who is licensed by the Commissioner under Article 33 of this Chapter whose activities are limited exclusively to the sale of insurance.
- d. An adjuster licensed by the Commissioner under Article 33 of this Chapter whose activities are limited to adjustment of claims.
- e. An individual who is an officer, a member, or an employee of a board.

- (5) 'Underwriting' means the process of selecting risks and classifying them according to their degrees of insurability so that the appropriate rates may be assigned. The process also includes rejection of those risks that do not qualify.

"§ 58-47-155. TPAs and service companies; authority; qualifications.

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA or a service company with respect to risks located in this State for a self-insurer unless that person complies with this Article.

(b) A TPA or service company shall post with the self-insurer a fidelity bond or other appropriate coverage, issued by an authorized insurer, in a form acceptable to the Commissioner, in an amount commensurate with the risk, and with the governing board of the self-insurer as obligee or beneficiary.

(c) A TPA or service company shall maintain errors and omissions coverage or other appropriate liability insurance in a form acceptable to the Commissioner and in an amount commensurate with the risk. The governing body of the self-insurer shall be obligee or beneficiary of the coverage or insurance.

(d) If the Commissioner determines that a TPA or service company or any other person has not materially complied with this Article or with any rule adopted or order issued under this Article, after notice and opportunity to be heard, the Commissioner may order for each separate violation a civil penalty under G.S. 58-2-70(d).

(e) If the Commissioner finds that because of a material noncompliance that a self-insurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the self-insurer and its covered members or persons and creditors for recovery of compensatory damages for the benefit of the self-insurer and its covered members or persons and creditors, or for other appropriate relief.

(f) Nothing in this Article affects the Commissioner's right to impose any other penalties provided for in this Chapter or limits or restricts the rights of covered members or persons, claimants, and creditors.

(g) If an order of rehabilitation or liquidation of the self-insurer has been entered under Article 30 of this Chapter, and the receiver appointed under that order determines that the TPA or service company or any other person has not materially complied with this Article or any rule adopted or order issued under this Article, and the self-insurer suffered any loss or damage from the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the self-insurer.

"§ 58-47-160. Written agreement; composition; restrictions.

(a) No person may act as a TPA or service company without a written agreement between the TPA or service company and the self-insurer. The written agreement shall be retained by the self-insurer and the TPA or service company for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, to the extent those requirements apply to the functions performed by the TPA or service company.

(b) Groups shall file with the Commissioner the written agreement, and any amendments to the agreement, within 30 days after execution. Single employers shall furnish the Commissioner, upon request, the written agreement and any amendments to the agreement. The information required by this section, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA or service company.

(c) The written agreement shall set forth the duties and powers of the TPA or service company and the self-insurer. The Commissioner shall disapprove any such written agreement that:

- (1) Subjects the self-insurer to excessive charges for expenses or commission.
- (2) Vests in the TPA or service company any control over the management of the affairs of the self-insurer to the exclusion of the governing board of the self-insurer.
- (3) Is entered into with any TPA or service company if the person acting as the TPA or service company, or any of the officers or directors of the TPA or service company, is of known bad character or has been affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relationships with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.
- (4) Is determined by the Commissioner to contain provisions that are not fair and reasonable to the self-insurer.

(d) The self-insurer, TPA, or service company may, by written notice, terminate the agreement as provided in the agreement. The self-insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The self-insurer shall fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the self-insurer and the TPA or service company.

(e) The contract may not be assigned in whole or part by the TPA or service company without prior approval by the governing board of the self-insurer and the Commissioner.

"§ 58-47-165. Books and records.

(a) Every TPA or service company shall maintain and make available to the self-insurer complete books and records of all transactions performed on behalf of the self-insurer. The books and records shall be maintained by the self-insurer, TPA, or service company in accordance with G.S. 58-47-180.

(b) The Commissioner shall have access to books and records maintained by a TPA or service company for the purposes of examination, audit, or inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of the covered members of a self-insurer, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA or service company.

(c) The Commissioner may use the TPA or service company as an intermediary in the Commissioner's dealings with the self-insurer if the Commissioner determines that this will result in a more rapid and accurate flow of information from the self-insurer and will aid in the self-insurer's compliance with this Article and the Workers' Compensation Act.

(d) The self-insurer shall own the books and records generated by the TPA or service company pertaining to the self-insurer's business.

(e) The self-insurer shall have access to and rights to duplicate all books and records related to its business.

(f) If the self-insurer and the TPA or service company cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA or service company, shall transfer all books and records to the new TPA, service company, or the self-insurer in a form acceptable to the Commissioner. The new TPA or service company shall acknowledge, in writing, that it is responsible for retaining the books and records of the previous TPA, service company, or the self-insurer as required in subsection (a) of this section.

"§ 58-47-170. Payments to TPA or service company.

If a self-insurer uses the services of a TPA, the payment to the TPA of any premiums or charges for insurance by or on behalf of the insured party is considered payment to the self-insurer. The payment of return premiums or claim payments forwarded by the self-insurer to the TPA or service company is not considered payment to the insured party or claimant until the payments are received by the insured party or claimant. This section does not limit any right of the self-insurer against the TPA or service company resulting from the failure of the TPA or service company to make payments to the self-insurer, insured parties, or claimants.

"§ 58-47-175. Approval of advertising.

A TPA or service company may use only the advertising pertaining to or affecting the business underwritten by a self-insurer that has been approved in writing by the self-insurer before its use.

"§ 58-47-180. Premium collection and payment of claims.

(a) The TPA or service company, at a minimum, shall:

- (1) Periodically render an accounting to the self-insurer detailing all transactions performed by the TPA or service company pertaining to the business underwritten, premium or other charges collected, and claims paid by the self-insurer, when applicable.
- (2) Deposit all receipts directly into an account maintained in the name of the self-insurer.
- (3) Pay claims on drafts or checks of and authorized by the self-insurer.
- (4) Not withdraw from the self-insurer's account except for authority limited to pay claims and refund premiums.
- (5) Remit return premium, directly from the self-insurer's account, to the person entitled to the return premium.

(b) Any check disbursement authority granted to the TPA or service company may be terminated upon the self-insurer's written notice to the TPA or service company or upon termination of the agreement. The self-insurer may suspend the check disbursement authority during the pendency of any dispute regarding the cause for termination.

"§ 58-47-185. Notices; disclosure.

(a) When the services of a TPA are used, the TPA shall provide a written notice approved by the self-insurer to covered members advising them of the identity of, and relationship among, the TPA, the member, and the self-insurer.

(b) When a TPA collects funds, the reason for collection of each item shall be identified to the member and each item shall be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the self-insurer.

(c) The TPA shall disclose to the self-insurer all charges, fees, and commissions received from all services in connection with the provision of administrative services for the self-insurer, including any fees or commissions paid by self-insurers for obtaining reinsurance.

(d) The TPA or service company shall disclose to the self-insurer the nature of other business in which it is involved.

"§ 58-47-190. Compensation.

A TPA or service company shall not enter into any agreement or understanding with a self-insurer that makes the amount of the TPA's or service company's commissions, fees, or charges contingent upon savings affected in the adjustment, settlement, and payment of losses covered by the self-insurer's obligations. This section does not prohibit a TPA or service company from receiving performance-based compensation for providing medical services through a physician-based network or auditing services and does not prevent the compensation of a TPA or service company from being based on premiums or charges collected or the number of claims paid or processed.

"§ 58-47-195. Examinations.

TPAs and service companies may be examined under G.S. 58-2-131, 58-2-132, and 58-2-133.

"§ 58-47-200. Unfair trade practices.

TPAs and service companies are subject to Article 63 of this Chapter.

"§ 58-47-205. Other requirements.

(a) A TPA or service company, or any owner, officer, employee, or agent of a TPA or service company, or any other person affiliated with or related to the TPA or service company shall not serve as a trustee of a self-insurer.

(b) Each TPA or service company shall make available for inspection by the Commissioner copies of all contracts with persons using the services of the TPA."

Section 4. Chapter 97 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5.

"Individual Employers.

"§ 97-165. Definitions.

As used in this Article:

- (1) 'Act' means the Workers' Compensation Act established in Article 1 of this Chapter.
- (2) 'Certified audit' means an audit on which a certified public accountant expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer, in conformity with generally accepted accounting principles as considered necessary by the auditor under the circumstances.
- (3) 'Certified public accountant' or 'CPA' means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the GAAP financial statement and require the individual to replace the CPA with another whose relationship with the individual is independent within the meaning of this definition.
- (4) 'Commissioner' means the Commissioner of Insurance.
- (5) 'Corporate surety' means an insurance company authorized by the Commissioner to write surety business in this State.
- (6) 'GAAP financial statement' means a financial statement as defined by generally accepted accounting principles.
- (7) 'Hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a self-insurer is insolvent or, although not yet financially impaired or insolvent, is unlikely to be able to meet obligations with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business.

- (8) 'Management' means those persons who are authorized to direct or control the operations of a self-insurer.
- (9) 'Qualified actuary' means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries, who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, and is in compliance with G.S. 58-2-171.
- (10) 'Self-insurer' means a single employer who retains liability under the Act and is licensed under this Article.

"§ 97-170. License applications; required information.

(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article.

(b) An applicant for a license as a self-insurer shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. No application is complete until the Commissioner has received all required information.

(c) Only an applicant whose employee base is actuarially sufficient in numbers and provides an actuarially appropriate spreading of risk and whose total fixed assets amount to five hundred thousand dollars (\$500,000) or more may apply for a license. In judging the applicant's financial strength and liquidity relative to its ability to comply with the Act, the Commissioner shall consider the applicant's:

- (1) Organizational structure and management;
- (2) Financial strength;
- (3) Source and reliability of financial information;
- (4) Risks to be retained;
- (5) Workers' compensation loss history;
- (6) Number of employees;
- (7) Claims administration;
- (8) Excess insurance; and
- (9) Access to excess insurance or reinsurance.

(d) The license application shall comprise the following information:

- (1) Company name, organizational structure, location of principal office, contact person, organization date, type of operations within this State, management background, and addresses of all plants or offices in this State.
- (2) Certified audited GAAP financial statements prepared by a CPA for the two most recent years. The financial statement formulation shall facilitate application of ratio and trend analysis.
- (3) Evidence of the insurance required by G.S. 97-190.
- (4) Demonstration, satisfactory to the Commissioner, that the employee base is actuarially sufficient in numbers and provides an actuarially appropriate spreading of risk.
- (5) For applicants with 20 or more full-time employees, a certificate or other evidence of safety inspection, satisfactory to the Commissioner, that certifies that all safety requirements of the Department of Labor have been met.

- (6) Summary of workers' compensation benefits paid for the last three calendar years, as well as the total liability for all open claims within 30 days or some other period acceptable to the Commissioner not to exceed 90 days, before the filing of the application.
- (7) Summary, by risk classification, of annual payroll and number of employees within the State.
- (8) Book value of fixed assets located within the State.
- (9) Proof of compliance with the claims administration provisions of Article 47 of Chapter 58 of the General Statutes.
- (10) A letter of assent, stipulating the applicant's acceptance of membership status in the North Carolina Self-Insurance Guaranty Association under Article 4 of this Chapter.

(e) Every applicant shall execute and file with the Commissioner an agreement, as part of the application, in which the applicant agrees to deposit with the Commissioner cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Article and the Act pursuant to G.S. 97-185.

"§ 97-175. License.

(a) After the review of the application and all supporting materials, the Commissioner shall either grant or deny a license. If a license is denied, the Commissioner shall notify the applicant of the denial and inform the applicant of the deficiencies that constitute the basis for denial.

(b) If the deficiencies are resolved within 60 days after the Commissioner's notice of denial, the applicant shall be granted a license. The applicant may be granted additional time to remedy the deficiencies in its application. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. If the requirements of this Article have not been met, the application shall be withdrawn or denied.

"§ 97-180. Reporting and records.

(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited GAAP financial statement, prepared by a CPA, for that fiscal year. The financial statement formulation shall facilitate the application of ratio and trend analysis.

(b) Every self-insurer shall submit within 120 days after the end of its fiscal year a certification from a qualified actuary setting forth the actuary's opinion relating to loss and loss adjustment expense reserves for workers' compensation obligations for each state in which the self-insurer does business. The certification shall show liabilities, excess insurance carrier and other qualifying credits, if any, and net retained workers' compensation liabilities. The qualified actuary shall present an annual report to the self-insurer on the items within the scope of and supporting the certification, within 90 days after the close of the self-insurer's fiscal year. Upon request, the report shall be submitted to the Commissioner.

(c) Every self-insurer shall submit within 120 days after the end of its fiscal year a report in the form of a sworn statement prescribed by the Commissioner, setting forth the total workers' compensation benefits paid in the previous fiscal year, as well as the total outstanding workers'

compensation liabilities for each loss year, recorded at the close of its fiscal year for the net retained liability.

(d) Every self-insurer shall submit within 120 days after the end of its fiscal year annual payroll information. The report shall summarize payroll, by annual amount paid, and the number of employees, by classification, using the rules, classifications, and rates in the most recently approved Workers' Compensation and Employers' Liability Insurance Manual governing the audits of payrolls and the adjustments of premiums. Every self-insurer shall maintain true and accurate payroll records. These payroll records shall be maintained to allow for verification of the completeness and accuracy of the annual payroll report.

(e) Every self-insurer shall report promptly to the Commissioner changes in the names and addresses of the businesses it self-insures or intends to self-insure, as well as significant changes in the financial condition, including bankruptcy filings, and changes in its business structure, including its divisions, subsidiaries, affiliates, and internal organization. Any change shall be reported in writing to the Commissioner within 10 days after the effective date of the change.

"§ 97-185. Deposits or surety bond.

(a) Every self-insurer shall deposit with the Commissioner an amount equal to twenty-five percent (25%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such other amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.

(b) A self-insurer organized and authorized before the effective date of this section shall have 24 months from the effective date of this section to comply with this section.

(c) Deposits received, changes to existing deposits, or deposits exchanged after the effective date of this section, shall comprise one or more of the following:

- (1) Interest-bearing bonds of the United States of America.
- (2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.
- (4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety.
- (5) Any other investments that are approved by the Commissioner.

(d) All bonds or securities that are posted as a security deposit shall be valued annually at market value. If market value is less than face value, the Commissioner may require the self-insurer to post additional securities. In making this determination, the Commissioner shall consider the self-insurer's financial condition, the amount by which market value is less than face value, and the likelihood that the securities will be needed to provide benefits.

(e) Securities deposited under this section shall be assigned to the Commissioner, the Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a manner that renders the securities negotiable by the Commissioner. If a self-insurer is deemed by the Commissioner to be in a hazardous financial condition, the Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet the self-insurer's obligations under the Act. Interest accruing on any negotiable security deposited under this Article shall be collected and transmitted to the self-insurer if the self-insurer is not in a hazardous financial condition.

(f) No judgment creditor, other than a claimant entitled to benefits under the Act, may levy upon any deposits made under this section.

(g) Securities held by the Commissioner under this section may be exchanged or replaced by the self-insurer with other securities of like nature and amount as long as the self-insurer is not in a hazardous financial condition. No release shall be effectuated until replacement securities or bonds of an equal value have been substituted. Any surety bond may be exchanged or replaced with another surety bond that meets the requirements of this section if 90 days' advance written notice is given to the Commissioner. If a self-insurer ceases to self-insure or desires to replace securities with an acceptable surety bond or bonds, the self-insurer shall notify the Commissioner, and may recover all or a portion of the securities deposited with the Commissioner upon posting instead an acceptable special release bond issued by a corporate surety in an amount equal to the total value of the securities. The special release bond shall cover all existing liabilities under the Act plus an amount to cover future loss development and shall remain in force until all obligations under the Act have been discharged fully.

(h) If a self-insurer ceases to self-insure, no deposits shall be released by the Commissioner until the self-insurer has discharged fully all of the self-insurer's obligations under the Act.

(i) An endorsement to a surety bond shall be filed with the Commissioner within 90 days after the effective date of the endorsement.

"§ 97-190. Excess insurance.

(a) Every self-insurer, as a prerequisite for licensure under this Article, shall maintain specific and aggregate excess loss coverage through an insurance policy. A self-insurer shall maintain limits and retentions commensurate with its risk. A self-insurer's retention shall be the lowest retention suitable for the self-insurer's exposures and level of annual premium. The Commissioner may require different levels, or waive the requirement, of specific and aggregate excess loss coverage consistent with the market availability of excess loss coverage, the self-insurer's claims experience, and the self-insurer's financial condition.

(b) An excess insurance policy required by this section shall be issued by either a licensed insurance company or an approved surplus lines insurance company and shall:

(1) Provide for at least 30 days' written notice of cancellation by registered or certified mail, return receipt requested, to the self-insurer and to the Commissioner.

- (2) Be renewable automatically at its expiration, except upon 30 days' written notice of nonrenewal by certified mail, return receipt requested, to the self-insurer and to the Commissioner.

(c) Every self-insurer shall provide to the Commissioner evidence of coverage and any amendments within 30 days after their effective dates. Every self-insurer shall, at the request of the Commissioner, furnish copies of its excess insurance policies and amendments.

"§ 97-195. Revocation of license.

(a) The Commissioner summarily may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license summarily, the Commissioner may consider any or all of the following:

- (1) Determination of insolvency by a court of competent jurisdiction.
- (2) Institution of bankruptcy proceedings.
- (3) If the self-insurer is in a hazardous financial condition.

(b) The Commissioner, upon at least 45 days' notice, may revoke a license if there is satisfactory evidence for the revocation. In determining whether to revoke a license under this subsection, the Commissioner may consider any or all of the following:

- (1) Whether the self-insurer has experienced a material loss or deteriorating operating trends, or reported a deficit financial position.
- (2) Whether any affiliate or subsidiary is insolvent, threatened with insolvency, or delinquent in payment of its monetary or any other obligation.
- (3) Whether the self-insurer has failed to pay premium taxes pursuant to Article 8B of Chapter 105 of the General Statutes.
- (4) Whether the self-insurer has failed to pay an assessment under G.S. 97-100.
- (5) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the Commissioner's opinion may affect a self-insurer's solvency.
- (6) Whether the management of a self-insurer has failed to respond to the Commissioner's inquiries about the condition of the self-insurer or has furnished false and misleading information in response to an inquiry by the Commissioner.
- (7) Whether the management of a self-insurer has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to a lending institution or to the general public, or has made a false or misleading entry or omitted an entry of material amount in the filed financial information.
- (8) Whether the self-insurer has experienced or will experience in the foreseeable future, cash flow or liquidity problems.
- (9) Whether the self-insurer has not complied with the other provisions of this Article or the Act.
- (10) Whether the self-insurer has failed to make proper and timely payment of claims as required by this Article.

(c) Any self-insurer subject to license revocation under subsection (a) or (b) of this section may request an administrative hearing before the Commissioner to review that order. If a hearing is requested, a notice of hearing shall be served, and the notice shall state the time and place of hearing and the conduct, condition, or ground on which the Commissioner based the order. Unless mutually agreed upon between the Commissioner and the self-insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be either in Wake County or in some other place designated by the Commissioner. The Commissioner shall hold all hearings under this section privately unless the self-insurer requests a public hearing, in which case the hearing shall be public. The request for a hearing shall not stay the effect of the order.

"§ 97-200. Claims administration.

(a) A self-insurer shall not utilize any claims adjuster unless the adjuster is licensed under G.S. 58-33-25.

(b) Every self-insurer shall comply with the provisions of Article 47 of Chapter 58 of the General Statutes that are related to claims administration."

Section 5. G.S. 97-93 reads as rewritten:

"§ 97-93. *Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.*

(a) Every employer subject to the provisions of this Article relative to the payment of compensation shall either:

(1) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized; or

(2) ~~Furnish to the Commissioner of Insurance satisfactory proof of the employer's financial ability, either alone or through membership in a group of two or more employers who are members of the same trade or professional association and who agree to pool their liabilities under this Article, to directly pay the compensation in the amount and manner and when due as provided for in this Article. The trade or professional association must have been incorporated in North Carolina and in existence at least five years prior to the date of application to the Commissioner of Insurance to form a self-insurer's fund and shall submit a written determination from the Internal Revenue Service that it is exempt from taxation under 26 U.S.C. § 501(c).~~

~~A group organized and approved under this subdivision prior to July 1, 1995, is not required to consist of employers of the same trade or professional association, have existed for five years, have been incorporated in North Carolina, or furnish the determination of tax-exempt status under 26 U.S.C. § 501(c).~~

(3) Obtain a license from the Commissioner of Insurance under Article 5 of this Chapter or under Article 47 of Chapter 58 of the General Statutes.

(b) ~~In the case of subdivision (a)(2) of this section, the Commissioner of Insurance may require the deposit of an acceptable security, indemnity, or~~

~~bond to secure the payment of compensation liabilities as they are incurred. Any individual employer or group of employers who furnish proof of financial ability under subdivision (a)(2) of this section shall be governed in all respects by this Article and by rules adopted by the Commissioner of Insurance.~~

~~(c) Payment of dividends to the members of any group of employers who agree to pool their liabilities under subdivision (a)(2) of this section shall not be contingent upon the maintenance or continuance of membership in such pools.~~

~~(d) Groups of two or more employers who agree to pool their liabilities under subdivision (a)(2) of this section are subject, in addition to the provisions cited in G.S. 58-2-145(a), to G.S. 58-2-165, G.S. 58-3-81, 58-6-25, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, 30, and 34 of Chapter 58 of the General Statutes.~~

(e) Every employer who is in compliance with the provisions of subsection (a) of this section shall post in a conspicuous place in places of employment a notice stating that employment by this employer is subject to the North Carolina Workers' Compensation Act and stating whether the employer has a policy of insurance against liability or qualifies as a self-insured employer. In the event the employer allows its insurance to lapse or ceases to qualify as a self-insured employer, the employer shall, within five working days of this occurrence, remove any notices indicating otherwise."

Section 6. G.S. 97-143 reads as rewritten:

"§ 97-143. *Use of deposits made by insolvent member self-insurers.*

After the Commissioner has notified the Association, under G.S. 97-136(a), that a member is insolvent, the Commissioner shall assign and deliver to the Association, and the Association is authorized to expend the deposit made by the insolvent member pursuant to G.S. 97-93(b), under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the Association to pay covered claims against ~~the premium taxes owed by the~~ insolvent member as required by this Article, and to the extent the deposit is needed to pay expenses of the Association relating to covered claims against the insolvent member. The Association shall account to the Commissioner and the insolvent member or its successor for all deposits received from the Commissioner under this section."

Section 7. G.S. 58-2-145 and G.S. 97-96 are repealed.

Section 8. G.S. 97-130(6) reads as rewritten:

"(6) 'Member self-insurer' or 'member' means a self-insurer which is authorized by the Commissioner to self-insure pursuant to G.S. 97-93, 97-94 and 97-96, 97-93 and G.S. 97-94."

Section 9. G.S. 97-131(b)(3) reads as rewritten:

"(3) In determining the membership of the Association pursuant to subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no employer or group of employers claiming self-insurer status may be deemed to be a member of the Association on any date after the effective date of this Article,

unless that employer or group of employers is at that time authorized as a self-insurer by the Commissioner pursuant to G.S. 97-93, 97-94, and 97-96, 97-93 and G.S. 97-94."

Section 10. This act becomes effective December 1, 1997.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 7:30 p.m. on the 5th day of August, 1997.

H.B. 63

CHAPTER 363

AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY ANNEXATIONS AND CONCERNING ANNEXATION OF AREAS BY THE TOWNS OF MOREHEAD CITY AND NEWPORT WHERE PLANNING JURISDICTION WAS RECENTLY GRANTED TO THOSE TOWNS BY LOCAL ACT.

The General Assembly of North Carolina enacts:

Section 1. Section VI of the Charter of the Town of River Bend, being that Charter approved by the Municipal Board of Control and filed with the Secretary of State on January 14, 1981, as added by Chapter 26 of the Session Laws of 1987, reads as rewritten:

"Section VI. ~~The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes.~~ (a) The city must hold a referendum on whether to annex an area into the city if the city council receives a petition opposing the annexation signed by twenty-five percent (25%) of the registered voters who own real property in the area proposed to be annexed. The petition must be received by the city council no later than the adjournment of the public hearing required to be held under G.S. 160A-37. If the city council receives such a petition, then the annexation ordinance shall become effective only if approved by the voters of the area proposed to be annexed.

(b) If a referendum is required under subsection (a) of this section, the city council shall order the board of elections which conducts elections for that city to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within 90 days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

- (1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;
- (2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and
- (3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the city or town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged.

At such election the question on the ballot shall be:

'[] FOR [] AGAINST
Annexation.'

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by this Part.

(c) The Town of River Bend has jurisdiction under Article 19 of Chapter 160A of the General Statutes over the following described territory:

TRACT ONE

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at a point on the southern right-of-way line of U.S. Highway 17, said point being the northwest corner of plan of Piner Estates recorded in Plat Cabinet D, Slide 666, Craven County Registry; thence from said point of beginning along and with westernmost line of said Piner Estates S27 degrees 29'38"W 528.53 feet to the northwesternmost corner of lot No. 1, Craven Woods Subdivision recorded in Plat Cabinet C, Slide 41, Craven County Registry; thence along and with line between aforesaid Piner Estates and Craven Woods Subdivisions N53 degrees 05'15"E 1186.76' to a point; thence continuing with said line N69 degrees 00' E 1106.85 feet to a point, the southeasternmost corner of Lot 1, Piner Estates; thence, S29 degrees 34'19"E to the centerline of secondary road No. 1307, (this point being designated by the letter 'C' on that certain map or plat entitled Trent Estates recorded in Map Book 10, Page 72, Craven County Registry); thence continuing S29 degrees 34'19"E 30.0 feet to a point on the southern right-of-way line of secondary road No. 1307; thence with said southern right-of-way line of secondary road No. 1307 in a westwardly direction to a point on said southern right-of-way line where 'Harris' easternmost line extended southwardly would intersect said right-of-way line; thence, N00 degrees 12'17"W 199.96 feet to a point; thence with said Harris easternmost line N84 degrees 45'48"W 95.12 feet to a point; thence N3 degrees 11'55"E 147.81' to a point on the southern right-of-way line of U.S. Highway No. 17; thence, with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 00'W 493 feet to a point at the intersection of said southern right-of-way line of U.S. Highway 17 and Canoe Branch; thence in a northerly direction with said Canoe Branch to its intersection with the centerline of Seaboard Coastline Railway, now abandoned; thence with said centerline of Seaboard Coastline Railway in an easterly direction to a point where the western line of Hidden Oaks Subdivision, recorded in Plat Cabinet D, Slide 455, Craven County Registry, extended would intersect said centerline; thence S25 degrees 51'58"E 62.5 feet to the northwestern corner of said Hidden Oaks Subdivision; thence with said northernmost line of Hidden Oaks Subdivision N69 degrees 43'03"E 3, 111.74 feet to the

northeast corner of said Hidden Oaks Subdivision S22 degrees 23'E 731.08 feet to a point on the northern right-of-way line of U.S. Highway No. 17; thence continuing S22 degrees 23'E 150.0 feet to a point on the southern right-of-way line of U.S. Highway No. 17; thence with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 48'50"W 727.98 feet to the northeastern corner of aforesaid Piner Estates; thence continuing with said southern right-of-way line S67 degrees 48'50"W 2,271.20 feet to the Point of Beginning.

TRACT TWO

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at the southeasternmost corner of Lot No. 18, Plan of Springdale Subdivision recorded in Plat Cabinet D, Slide 623, Craven County Registry; said corner being on the northern right-of-way line of U.S. Highway No. 17; thence along and with the easternmost line of aforesaid Springdale Subdivision N22 degrees 22'03"W 277.0 feet to a point; thence S62 degrees 05'E to the northwestern corner of Lot 79, Plan of Deerfield Subdivision, Phase 3, recorded in Plat Cabinet E, Slide 333, Craven County Registry; thence with northernmost line of aforesaid Deerfield Subdivision, Phase 3, N66 degrees 50'56"E 473.81 feet to a point; thence N50 degrees 07'40"E 281.86 feet to a point on the western right-of-way line of Forest Oaks Drive; thence with western right-of-way line of Forest Oaks Drive S42 degrees 22'20"E 200.19 feet to the northern right-of-way line of Rocky Run Road; thence with said right-of-way of Rocky Run Road S03 degrees 28'20"E 97.78 feet to a point on the northern right-of-way line of U.S. Highway No. 17; thence S66 degrees 50'56"W along and with said northern right-of-way line of U.S. Highway No. 17 to the Point of Beginning."

Section 1.1. Section 1 of S.L. 1997-219 reads as rewritten:

"Section 1. The Towns of Morehead City and Newport may not annex noncontiguous areas as provided in Part 4 of Article 4A of Chapter 160A of the General Statutes if the area to be annexed is closer to the other Town's corporate limits than it is to the corporate limits of the Town desiring to annex the area. However, either Town may annex such an area if it lies within an area where the Town could exercise its extraterritorial planning jurisdiction under S.L. 1997-185, or where the Town is exercising its extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes."

Section 2. This act becomes effective 30 days after it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

Became law on the date it was ratified.

H.B. 859

CHAPTER 364

AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO AUTHORIZE CERTAIN MUNICIPALITIES IN BRUNSWICK COUNTY TO LEVY OR INCREASE LOCAL OCCUPANCY TAXES,

AND TO AUTHORIZE PERSON COUNTY TO LEVY A ROOM
OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Brunswick County occupancy tax. (a) Authorization and scope. The Brunswick County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the county that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose, or to accommodations subject to a municipal room occupancy tax at the rate of six percent (6%).

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Brunswick County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Brunswick Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection to promote travel and tourism in Brunswick County. No more than ten percent (10%) of the funds remitted to the Authority under this subsection may be used for the Authority's administrative expenses, including salaries and benefits.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 2. Brunswick Tourism Development Authority. (a) Appointment and membership. When the board of commissioners of Brunswick County adopts a resolution levying a room occupancy tax under Section 1 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have 10 members appointed by the Brunswick County Commissioners as follows:

- (1) Five individuals who are currently involved in the promotion of travel and tourism, selected by the Brunswick County Commissioners.

- (2) Five individuals selected jointly by the South Brunswick Islands Chamber of Commerce and the Southport-Oak Island Chamber of Commerce.

The resolution shall provide for the members' terms of office and for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair. Members of the Authority shall serve without compensation.

The Authority shall meet monthly and shall adopt rules of procedure to govern its meetings. The Finance Officer for Brunswick County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 1 of this act to promote travel and tourism in Brunswick County as provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. County administrative provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255 and Section 2 of ratified House Bill 337, 1997 General Assembly, is further amended by adding the phrases "Brunswick," and "Person," in their proper alphabetical order.

Section 4. Conforming change. Section 2(a2) of Chapter 664 of the 1991 Session Laws, as enacted by Chapter 617 of the 1993 Session Laws, is repealed.

Section 5. Municipal administrative provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to

ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the municipalities in Brunswick County.

Section 6. Shallotte occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of Shallotte may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of Shallotte shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the

Shallotte Tourism Development Authority. The Authority shall use at least one-half of the funds remitted to it under this subsection to promote travel and tourism in Shallotte and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 7. Shallotte Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of Shallotte adopts a resolution levying a room occupancy tax under Section 6 of this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have five members appointed by the board of aldermen. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen of the Town of Shallotte shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Shallotte shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 6 of this act for the purposes provided in Section 6 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of Aldermen of the Town of Shallotte on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 8. Caswell Beach occupancy tax changes. Section 1 of Chapter 664 of the 1991 Session Laws reads as rewritten:

"Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Caswell Beach may by resolution, ~~after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Caswell Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Caswell Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as

~~a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~(e)(c) Use of Proceeds. The town may use the proceeds of a tax levied under this act subsection (a) of this section only for tourism-related expenditures. As used in this act, section, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.~~

~~The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 9. Holden Beach occupancy tax changes. Section 1 of Chapter 963 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Holden Beach Town Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(3) 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Holden Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Holden Beach Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Holden Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

The tax collector may collect any unpaid taxes levied under this act section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a

~~misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) (c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. ~~The funds received by the town pursuant to this act~~ proceeds of the tax levied under subsection (a) of this section shall be allocated to a special fund and used only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a) of this section only for beach renourishment and protection.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Holden Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 10. Ocean Isle Beach occupancy tax changes. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Ocean Isle Beach only, is reenacted and rewritten as Section 11 of this act.

Section 11. Ocean Isle Beach occupancy tax. (a) Authorization and scope. The Board of Commissioners of the Town of Ocean Isle Beach may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Ocean Isle Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of

accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The town council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 12. Sunset Beach occupancy tax changes. Section 1 of Chapter 956 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Sunset Beach Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and on the rental of all private residences and cottages, ~~regardless of whether the residence or cottage is rented for less than 15 days.~~ This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Sunset Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Sunset Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Sunset Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this act section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

~~(e) (c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The funds received by the town pursuant to this act shall be allocated town shall allocate the proceeds of the tax levied pursuant to subsection (a) of this section to a~~

special fund and ~~used shall use them~~ only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of the tax levied pursuant to subsection (a) of this section only for beach renourishment and protection.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Sunset Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 13. Yaupon Beach occupancy tax changes. Section 1 of Chapter 820 of the 1991 Session Laws reads as rewritten:

"Section 1. Yaupon Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Yaupon Beach may by resolution, ~~after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Yaupon Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Yaupon Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall

~~be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~(e) (c) Use of Proceeds. The town may use the proceeds of a tax levied under this act subsection (a) of this section only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.~~

~~The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier~~

~~than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Yaupon Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 14. Person County occupancy tax. (a) Authorization and scope. The Person County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Person County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. Of the net proceeds that accrue during the first four years that a tax is levied under this section, the Authority may use up to two-thirds only for the following tourism-related expenditures: (i) constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county, and (iii) supporting the May Festival and other festivals designed to attract tourists from outside the county. The Authority shall use the remaining net proceeds that accrue during the first four years that a tax is levied under this section only to promote travel and tourism in Person County.

Of the net proceeds that accrue after this four-year period, the Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Person County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the

term includes administrative expenses incurred by the Authority in engaging in the listed activities.

- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Section 15. Person Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under Section 14 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act.

The Authority shall be composed of six members, three appointed by the Person County Board of Commissioners and three appointed by the Roxboro City Council. One of the three members appointed by each governing body must be an owner or manager of a Person County hotel or motel. The remaining members must be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall determine the compensation, if any, to be paid to members of the Authority.

The initial terms of the members who are owners or managers of a hotel or motel shall be three years. Each governing body shall designate one of its remaining appointees to serve an initial term of two years and the other to serve an initial term of one year. Thereafter, all terms shall be three years. Vacancies shall be filled in the same manner as original appointments, and members appointed to fill vacancies shall serve for the remainder of the unexpired term.

At its first meeting and at the first meeting of each calendar year, the membership of the Authority shall elect one member to serve as chair until the first meeting of the following calendar year. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Person County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 14 of this act for the purposes provided in Section 14 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

Became law on the date it was ratified.

AN ACT TO AUTHORIZE THE ISSUANCE OF HUNTING LICENSES
FOR CERTAIN DISABLED HUNTERS WHO HAVE NOT COMPLIED
WITH THE HUNTING SAFETY COURSE REQUIREMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1A reads as rewritten:

"§ 113-270.1A. *Hunter safety course required.*

(a) ~~On~~ Except as provided in subsection (a1) of this section, on or after July 1, 1991, a person, regardless of age, may not procure a hunting license or hunt in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.

(a1) A person who qualifies for a totally disabled resident combination hunting-fishing license under G.S. 113-270.1C(b)(3) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

- (1) The person is accompanied by an adult of at least 21 years of age who is licensed to hunt; and
- (2) The adult hunter maintains a proximity to the disabled hunter which enables the adult to take immediate control of the hunting device at all times.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.

- (1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.
- (2) The Wildlife Resources Commission may conduct the course in hunter safety, using Commission personnel or other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.
- (3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.
- (4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

- (5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 1991, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) Nothing in this section shall be construed to prohibit the sale of lifetime licenses as provided in G.S. 113-270.2(c)(1a). Pending satisfactory completion of the hunter safety course, persons who possess such licenses may exercise the privileges thereof when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, 'accompanied' is defined as being able to take immediate control of the hunting device."

Section 2. Notwithstanding the provisions of Section 1 of this act, locations where hunting safety is taught shall not be relieved of their obligation to make the course accessible to persons with disabilities who wish to take the course.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:35 p.m. on the 6th day of August, 1997.

S.B. 178

CHAPTER 366

AN ACT TO ALLOW THE SECRETARY OF CULTURAL RESOURCES TO PROPOSE LANDS TO BE ACQUIRED WITH FUNDS FROM THE NATURAL HERITAGE TRUST FUND, TO AUTHORIZE EXPENDITURES FROM THE FUND FOR CONSERVATION AND PROTECTION PLANNING AND EDUCATIONAL PROGRAMS FOR OWNERS OF NATURE PRESERVES UNDER THE NATURE PRESERVES ACT, AND TO AUTHORIZE THE BOARD OF TRUSTEES OF THE FUND TO ENTER INTO AGREEMENTS FOR THE MANAGEMENT OF ACQUIRED LANDS WITH QUALIFIED NONPROFIT ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-77.7(c) reads as rewritten:

"(c) When the State acquires land pursuant to this Article, the ~~Chairman of the Board of Trustees~~ shall may direct a request to the State Treasurer to set aside an amount from the Fund not to exceed twenty percent (20%) of the appraised value of the land acquired, or the land affected if less than a fee interest was acquired, to be placed in a special stewardship account in the Fund. The special stewardship account shall be a nonlapsing account, and income derived from investment of the account shall be credited to the account. The special stewardship account shall be used for the management

of land acquired pursuant to this ~~Article, as directed by the Trustees, so long as such land remains in the Trust.~~ Article under the direction of the Trustees."

Section 2. G.S. 113-77.9 reads as rewritten:

"§ 113-77.9. *Acquisition of lands with funds from the Natural Heritage Trust Fund.*

(a) From time to time, but at least once each year, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, ~~and the Commissioner of Agriculture shall Agriculture, and the Secretary of Cultural Resources may propose to the Trustees lands to be acquired with funds from the Fund.~~ For each tract or interest proposed, the Secretary, the Chairman of the North Carolina Wildlife Resources Commission, ~~and the Commissioner of Agriculture Agriculture, and the Secretary of Cultural Resources shall provide the Trustees with the following information:~~

- (1) The value of the land for recreation, forestry, fish and wildlife habitat, and wilderness purposes, and its consistency with the plan developed pursuant to the State Parks Act, the State's comprehensive plan for outdoor recreation, parks, natural areas development, and wildlife management goals and ~~objectives;~~ objectives.
 - (2) Any rare or endangered species on or near the ~~land;~~ land.
 - (3) Whether the land contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now ~~uncommon;~~ uncommon.
 - (4) Whether the land contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important ~~geologic feature;~~ feature.
 - (5) The extent to which the land represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural ~~areas;~~ areas.
 - (6) Other sources of funds that may be available to assist in acquiring the ~~land;~~ land.
 - (7) The State department or division that will be responsible for managing the ~~land;~~ land.
 - (8) What assurances exist that the land will not be used for purposes other than those for which it is being ~~acquired;~~ and acquired.
 - (9) Whether the site or structure is of such historical significance as to be essential to the development of a balanced State program of historic properties.
- (b) The Trustees may authorize expenditures from the Fund to acquire:
- (1) Land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes.
 - (2) Land as additions to the system of parks, State trails, aesthetic forests, fish and wildlife management areas, wild and scenic rivers, and natural areas for the beneficial use and enjoyment of the public.

- (3) Subject to the limitations of subsection ~~(b1)~~, (b2) of this section, land that contributes to the development of a balanced State program of historic properties.

~~(b1) The Trustees may designate managers or managing agencies of the lands so acquired to receive grants from the Fund's stewardship account.~~ In authorizing expenditures from the Fund to acquire land pursuant to this Article, the first priority shall be the protection of land with outstanding natural or cultural heritage values. Land with outstanding natural heritage values is land that is identified by the North Carolina Natural Heritage Program as having State or national significance. Land with outstanding cultural heritage values is land that is identified, inventoried, or evaluated by the Department of Cultural Resources. The Trustees shall be guided by any priorities established by the Secretary, the Chairman of the Wildlife Resources Commission, ~~and the Commissioner of Agriculture~~ Agriculture, and the Secretary of Cultural Resources in their proposals made pursuant to subsection ~~(a), above.~~ (a) of this section.

~~(b1)~~ (b2) The Trustees may authorize expenditure of up to twenty-five percent (25%) of the funds credited to the Fund pursuant to G.S. 105-228.30 during the preceding fiscal year to acquire land under subdivision (3) of subsection ~~(b)~~, (b) of this section. No other funds in the Fund may be used for expenditures to acquire land under subdivision (3) of subsection ~~(b)~~, (b) of this section.

(c) The Trustees may authorize expenditures from the Fund to pay for the inventory of natural areas ~~by the Secretary's~~ conducted under the Natural Heritage Program conducted pursuant to Chapter 113A, Article 9A, of the General Statutes, established pursuant to the Nature Preserves Act, Article 9A of Chapter 113A of the General Statutes. The Trustees may also authorize expenditures from the Fund to pay for conservation and protection planning and for informational programs for owners of natural areas, as defined in G.S. 113A-164.3.

(d) The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article shall be vested in the State. ~~State agencies~~ A State agency with management responsibilities for lands ~~management responsibility for land~~ acquired pursuant to this Article may enter into ~~a management agreements in the form of leases with counties, cities, and towns~~ agreement or lease with a county, city, town, or private nonprofit organization qualified under G.S. 105-151.12 and G.S. 105-130.34 and certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the lands, and such lease agreements land. A management agreement or lease shall be executed by the Department of Administration pursuant to G.S. 143-341.

(d1) In any county in which real property was purchased pursuant to subsection (d) of this section as additions to the fish and wildlife management areas and where less than twenty-five percent (25%) of the land area is privately owned at the time of purchase, that county and any other local taxing unit shall be annually reimbursed, for a period of 20 years, from funds available to the North Carolina Wildlife Resources Commission

in an amount equal to the amount of ad valorem taxes that would have been paid to the taxing unit if the property had remained subject to taxation.

(e) The Secretary shall maintain and annually revise a list of acquisitions made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount paid from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee and to each House of the General Assembly after each revision.

(f) No provision of this Article shall be construed to eliminate hunting and fishing, as regulated by the laws of the State of North Carolina, upon properties purchased pursuant to this Article."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:36 p.m. on the 6th day of August, 1997.

S.B. 208

CHAPTER 367

**AN ACT PERTAINING TO THE SANITIZATION OF COOKING
UTENSILS PROVIDED BY LODGING ESTABLISHMENTS, AS
RECOMMENDED BY THE JOINT LEGISLATIVE
ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-248(a3) reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

- (1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;
- (2) Requirements for:
 - a. Lighting and water supply;
 - b. Wastewater collection, treatment, and disposal facilities; and
 - c. Lavatory and toilet facilities, food protection, and waste disposal;
- (3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact ~~surfaces~~; surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.
- (3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
- (4) The methods of food preparation, transportation, catering, storage, and serving;
- (5) The health of employees;
- (6) Animal and vermin control; and

- (7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, 'food samples' means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:37 p.m. on the 6th day of August, 1997.

S.B. 371

CHAPTER 368

AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 45B of Chapter 1 of the General Statutes reads as rewritten:

"International Commercial ~~Arbitration~~, Arbitration and Conciliation."

Section 2. G.S. 1-567.30 through G.S. 1-567.33 are codified as Part 1 of Article 45B of Chapter 1 of the General Statutes to be entitled "General Provisions."

Section 3. G.S. 1-567.68 is recodified as G.S. 1-567.33A, to be included in Part 1 of Article 45B of Chapter 1 of the General Statutes, as codified in Section 2 of this act.

Section 4. G.S. 1-567.34 through G.S. 1-567.67 are codified as Part 2 of Article 45B of Chapter 1 of the General Statutes, to be entitled "International Commercial Arbitration."

Section 5. G.S. 1-567.30 reads as rewritten:

"§ 1-567.30. *Preamble and short title.*

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution

of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration or conciliation as a means of resolving such disputes, to provide rules for the conduct of arbitration or conciliation proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such arbitration, arbitration or conciliation. This Article shall be known as the North Carolina International Commercial Arbitration and Conciliation Act".

Section 6. G.S. 1-567.31 reads as rewritten:

"§ 1-567.31. *Scope of application.*

(a) This Article applies to international commercial ~~arbitration~~, arbitration and conciliation, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this ~~Article~~ Article, except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration or conciliation is international if:

- (1) The parties to the arbitration or conciliation agreement have their places of business in different nations when the agreement is concluded; or
- (2) One or more of the following places is situated outside the nations in which the parties have their places of business:
 - a. The place of arbitration or conciliation if determined pursuant to the arbitration agreement;
 - b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or
 - c. The place with which the subject matter of the dispute is most closely connected; or
- (3) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

- (1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement;
- (2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration or conciliation, respectively, is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

- (1) A transaction for the exchange of goods and services;
- (2) A distribution agreement;
- (3) A commercial representation or agency;
- (4) An exploitation agreement or concession;
- (5) A joint venture or other related form of industrial or business cooperation;
- (6) The carriage of goods or passengers by air, sea, land, or road;
- (7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

- (8) The transfer of data or technology;
- (9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;
- (10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to ~~arbitration~~ arbitration, conciliation, or mediation, or may be submitted to ~~arbitration~~ arbitration, conciliation, or mediation only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration and Conciliation Act. This Article shall not apply to any agreement executed prior to June 13, 1991."

Section 7. Article 45B of Chapter 1 of the General Statutes is amended by adding a new Part to read:

"Part 3. International Commercial Conciliation.

"§ 1-567.68. Appointment of conciliators.

(a) The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliators.

(b) The conciliator shall assist the parties in an independent and impartial manner in the parties' attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness, and justice and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) The conciliator may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a prompt settlement of the dispute. Except as otherwise provided by this Article, other provisions of the law of this State governing procedural matters do not apply to conciliation proceedings brought under this Part.

"§ 1-567.69. Representation.

The parties may appear in person or be represented or assisted by any person of their choice.

"§ 1-567.70. Report of conciliators.

(a) At any time during the proceedings, a conciliator may prepare a draft conciliation agreement and send copies to the parties, specifying the time within which the parties must signify their approval. The draft conciliation agreement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a settlement proposed by the conciliator.

"§ 1-567.71. Confidentiality.

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible, and disclosure of that evidence shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to be given. This subsection does not limit the

admissibility of evidence when all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation, or a copy of such document, is not admissible in evidence, and disclosure of the document shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled.

"§ 1-567.72. Stay of arbitration; resort to other proceedings.

(a) The agreement of the parties to submit a dispute to conciliation is considered an agreement between or among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this Part as to all parties to the conciliation proceedings until the tenth day following the date of termination of the proceedings. For purposes of this section, conciliation proceedings are considered to have begun when the parties have all agreed to participate in the conciliation proceedings.

"§ 1-567.73. Termination of conciliation.

(a) A conciliation proceeding may be terminated as to all parties by any one of the following means:

- (1) On the date of the declaration, a written declaration of the conciliators that further efforts at conciliation are no longer justified.
- (2) On the date of the declaration, a written declaration of the parties addressed to the conciliators that the conciliation proceedings are terminated.
- (3) On the date of the agreement, a conciliation agreement signed by all of the parties.
- (4) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

(b) A conciliation proceeding may be terminated as to particular parties by any one of the following means:

- (1) On the date of the declaration, a written declaration of the particular party to the other parties and the conciliators that the conciliation proceedings are to be terminated as to that party.
- (2) On the date of the agreement, a conciliation agreement signed by some of the parties.
- (3) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

"§ 1-567.74. Enforceability of decree.

If the conciliation proceeding settles the dispute and the result of the conciliation is in writing and signed by the conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral

award rendered by an arbitral tribunal under this Article and has the same force and effect as a final award in arbitration.

"§ 1-567.75. Costs.

(a) On termination of the conciliation proceeding, the conciliators shall set the costs of the conciliation and give written notice of the costs to the parties. For purposes of this section, 'costs' includes all of the following:

- (1) A reasonable fee to be paid to the conciliators.
- (2) Travel and other reasonable expenses of the conciliators.
- (3) Travel and other reasonable expenses of witnesses requested by the conciliators, with the consent of the parties.
- (4) The cost of any expert advice requested by the conciliators, with the consent of the parties.
- (5) The cost of any court.

(b) Costs shall be borne equally by the parties unless a conciliation agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

"§ 1-567.76. Effect on jurisdiction.

Requesting conciliation, consenting to participate in the conciliation proceedings, participating in conciliation proceedings, or entering into a conciliation agreement does not constitute consenting to the jurisdiction of any court in this State if conciliation fails.

"§ 1-567.77. Immunity of conciliators and parties.

(a) A conciliator, party, or representative of a conciliator or party, while present in this State for the purpose of arranging for or participating in conciliation under this Part, is not subject to service of process on any civil matter related to the conciliation.

(b) A person who serves as a conciliator shall have the same immunity as judges from civil liability for their official conduct in any proceeding subject to this Part. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle."

Section 8. This act becomes effective October 1, 1997, and applies to any international commercial disputes that are subject on or after that date to conciliation pursuant to Article 45B of Chapter 1 of the General Statutes, as amended by this act.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:38 p.m. on the 6th day of August, 1997.

S.B. 374

CHAPTER 369

AN ACT TO EXEMPT FROM SALES AND USE TAX NUTRITIONAL SUPPLEMENTS SOLD BY CHIROPRACTORS.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-151.1. Selling nutritional supplements to patients.

A chiropractic physician may sell nutritional supplements at a chiropractic office to a patient as part of the patient's plan of treatment but may not otherwise sell nutritional supplements at a chiropractic office. A chiropractic physician who sells nutritional supplements to a patient must keep a record of the sale that complies with G.S. 105-164.24, except that the record may not disclose the name of the patient."

Section 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(13c) Nutritional supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment, as authorized by G.S. 90-151.1."

Section 3. This act becomes effective October 1, 1997, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:40 p.m. on the 6th day of August, 1997.

H.B. 14

CHAPTER 370

AN ACT TO MODIFY THE SALES TAX DEFINITION OF CUSTOM COMPUTER SOFTWARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(20) reads as rewritten:

"(20) 'Tangible personal property' means and includes personal property which Tangible personal property. -- Personal property that may be seen, weighed, measured, felt felt, or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall does not include stocks, bonds, notes, insurance insurance, or other obligations or securities, nor shall does it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program. The term also does not include access to a computer program or a database when the user of the computer program or database receives a separately stated fee or other charge for the access."

As used in this subdivision:

- a. ~~"Basic operational program" or "control program" means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.~~
- b. ~~"Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.~~
- c. ~~"Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:~~
 - 1. ~~Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or~~
 - 2. ~~The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.~~
- d. ~~"Storage media" means punched cards, tapes, disks, diskettes, or drums.~~
~~computer software delivered on a storage medium, such as a cd rom, a disk, or a tape."~~

Section 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

- "(43) Custom computer software. -- 'Custom computer software' is software written in accordance with the specifications of a specific customer. The term includes a user manual or other documentation that accompanies the sale of the software. The term does not include prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software."

Section 3. This act becomes effective October 1, 1997, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:42 p.m. on the 6th day of August, 1997.

AN ACT TO INCREASE THE LIMIT FOR AN ASSESSMENT WHEN THE ASSESSMENT IS PAID BY PEANUT PRODUCERS FOR THE PROMOTION OF PEANUTS AND AMENDING THE STRAWBERRY ASSESSMENT ACT TO IMPROVE THE COLLECTION OF ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-557 reads as rewritten:

"§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent ($1/2$ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as computed by the North Carolina Milk Commission. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer."

Section 2. G.S. 106-783 is amended by adding a new subsection (4) to read:

"(4) 'Strawberry plant seller' means a person who sells strawberry plants to growers for commercial production of strawberries."

Section 3. G.S. 106-785 reads as rewritten:

"§ 106-785. Two-thirds vote required; collection of ~~assessment~~ assessment; penalties; audits.

(a) The assessment shall not be collected unless at least two-thirds of the votes cast in the referendum are in favor of the assessment. If at least two-thirds of the votes cast in the referendum are in favor of the assessment, then the Department shall notify all strawberry plant growers sellers of the assessment. The assessment shall be added by the strawberry plant growers sellers to the price of all strawberry plants sold for commercial planting in North Carolina Carolina, and shall be remitted to the Department no later than the 10th day following the end of each calendar quarter. The Department shall provide forms to the strawberry plant growers sellers for reporting the assessment. All strawberry plant sellers shall provide each purchaser of strawberry plants for commercial production with an invoice that sets forth the amount of the assessment on the purchase covered by the invoice. Persons who purchase strawberry plants for commercial production on which the assessment has not been collected by the seller shall report such purchases and pay the assessment to the Department.

~~(b) The Association may bring an action against any plant grower who fails to pay the assessment to collect unpaid assessments, and if successful shall also recover the cost of such action, including attorney's fees. Each strawberry plant seller shall remit to the Department no later than the tenth day following the end of each calendar quarter the assessment on strawberry plants sold during that quarter. Any strawberry plant seller who fails to remit the assessment for the previous year's sales by January 10 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of one percent (1%) of the unpaid assessment for each month after January 10 that the assessment remains unpaid.~~

(c) The Association may conduct inspections or audits of the books of any strawberry plant seller. If the inspection or audit reveals that a strawberry plant seller has willfully failed to remit assessments when due, the seller shall pay the Association the reasonable costs of the inspection or audit.

(d) The Association may bring an action to collect unpaid assessments, penalties, and reasonable costs of any inspection or audit as provided in subsection (c) of this section, against any strawberry plant seller who fails to pay the assessment, penalties, or costs. If successful, the Association shall also recover the cost of such action, including attorneys' fees."

Section 4. Section 3 of this act becomes effective October 1, 1997, and applies to assessments accruing on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1997.

Became law upon approval of the Governor at 5:43 p.m. on the 6th day of August, 1997.

S.B. 919

CHAPTER 372

AN ACT TO REQUIRE DISCONTINUATION OF
TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL
PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter II of Chapter 15A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 16A.

"Discontinuation of Telecommunications Services.

"§ 15A-299. Discontinuation of telecommunications services used for unlawful purposes.

(a) The legislature finds that some persons use telecommunications services to violate State or federal criminal law. The legislature further finds that some persons use telecommunications services or technology, such as call forwarding and cellular radio transmission, to avoid detection or arrest.

(b) A customer of a telecommunications company operating within the State may use telecommunications services only for lawful purposes.

(c) If a local, State, or federal law enforcement officer acting within the scope of the officer's duties obtains evidence that telecommunications services are being used or have been used by a customer or by the employee or agent of the customer to violate State or federal criminal law, the officer may request either the district attorney or the Attorney General as appropriate to apply to the district court of the county in which the suspected violation of State or federal criminal law occurred for an order requiring the telecommunications company to discontinue service to the customer. The court shall hold a hearing on the application as soon as possible, but no sooner than 48 hours after notice of the application for discontinuation of service is delivered to the address at which the telecommunications services are furnished or to the address to which bills for telecommunications services are mailed, according to the telecommunications company records. Notice must also be given to the registered agent for the service of process upon the telecommunications company at least 48 hours prior to the hearing. Notices required under this section shall be given pursuant to the provisions of Rule 4 of the North Carolina Rules of Civil Procedure. If the court finds clear and convincing evidence that the telecommunications services are being used or have been used to violate State or federal criminal law, the court may order the telecommunications company to discontinue such service immediately.

(d) Telecommunications services discontinued under this section may be reinstated only by court order, and call forwarding or message referrals, whether recorded or live, may not be provided until reinstatement of service is ordered by the court. The court may order reinstatement of telecommunications services if it finds that the customer is not likely to use the services to violate State or federal criminal law. The standard of proof shall be the same as that used for the disconnect order.

(e) A telecommunications company shall be held harmless from liability to any person when complying with any court order issued under this section."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 5:44 p.m. on the 6th day of August, 1997.

H.B. 967

CHAPTER 373

AN ACT TO PROVIDE SELECTION OF EITHER OF THE TWO NEAREST ROUTES TO A NON-LIGHT-TRAFFIC ROAD, AND TO SPECIFY THAT THE DEPARTMENT OF TRANSPORTATION MAY ADOPT A RULE ALLOWING SPECIAL WEIGHT PERMITS TO BE ISSUED FOR VEHICLES TRANSPORTING WOOD RESIDUALS ON NON-INTERSTATE HIGHWAYS, AS AUTHORIZED BY EXISTING STATE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. -- The following exceptions apply to G.S. 20-118(b) and 20-118(e).

- (1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.
- (2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:
 - a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
 - b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.
- (3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.
- (4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.
- (5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of

origin on a light-traffic road to either one of the two nearest highway highways that is not a light-traffic road:

- a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.
 - b. Meats or agricultural crop products originating from a farm to first market.
 - c. Unprocessed forest products originating from a farm or from woodlands to first market.
 - d. Livestock or poultry from their point of origin to first market.
 - e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.
 - f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).
 - g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.
- (6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.
 - (7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.
 - (8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).
 - (9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.
 - (10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be

allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

- (11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.
- (12) Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions, is hauling agricultural crops from the farm where they were grown to first market, is within 35 miles of that farm, does not operate on an interstate highway while hauling the crops, and does not exceed its registered weight:
 - a. Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.
 - b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.
 - c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

Section 2. The Department of Transportation may adopt a rule authorizing issuance of special weight permits for vehicles transporting wood residuals on non-interstate highways, as authorized by existing State law, G.S. 20-119.

Section 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Department may adopt the rule authorized by Section 2 of this act as a temporary rule no later than September 1, 1997.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 5:45 p.m. on the 6th day of August, 1997.

H.B. 1032

CHAPTER 374

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT A RULE TO AUTHORIZE THE USE OF DESIGN CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMPLIES WITH FEDERAL LAW AND THAT PROVIDES FOR ALTERNATE LANDFILL LINERS THAT ARE AT LEAST AS

PROTECTIVE AS THE CURRENTLY AUTHORIZED LANDFILL LINER.

The General Assembly of North Carolina enacts:

Section 1. The Commission for Health Services shall adopt a rule regarding design criteria for municipal solid waste landfills that complies with 40 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for alternate landfill liners that are at least as protective as the liner currently authorized under the rules of the Commission for Health Services.

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Commission for Health Services shall adopt the rule required by Section 1 of this act as a temporary rule no later than 1 July 1998.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 5:48 p.m. on the 6th day of August, 1997.

S.B. 320

CHAPTER 375**AN ACT TO ALLOW THE ESTABLISHMENT OF PROGRAMS TO TRAIN LICENSED REGISTERED NURSES TO CONDUCT MEDICAL EXAMINATIONS OF VICTIMS OF SEXUAL OFFENSES, TO CONDUCT MEDICAL PROCEDURES TO COLLECT EVIDENCE FROM THE VICTIMS, AND TO ALLOW DIRECT PAYMENT TO NURSES WHO PROVIDE THIS SERVICE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.38 reads as rewritten:

"§ 90-171.38. *Standards for nursing programs.*

(a) A nursing program may be operated under the authority of a general hospital, or an approved post-secondary educational institution. The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. Any institution desiring to establish a nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. Those standards shall be designed to ensure that graduates of those programs have the education necessary to safely and competently practice nursing. The Board shall encourage the continued operation of all present programs that meet the standards approved by the Board.

(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct medical examinations for the purpose of collecting evidence from the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree

sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. The Board, pursuant to G.S. 90-171.23(b)(14) and, in cooperation with the North Carolina Medical Board as described in G.S. 90-6, shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

Section 2. G.S. 90-171.44 reads as rewritten:

"§ 90-171.44. *Prohibited acts.*

It shall be a violation of this Article, and subject to action under G.S. 90-171.37, for any person to:

- (1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet ~~therein~~; therein.
- (2) Practice nursing under cover of any fraudulently obtained ~~license~~; license.
- (3) Practice nursing without a ~~license~~; license. This subdivision shall not be construed to prohibit any licensed registered nurse who has successfully completed a program established under G.S. 90-171.38(b) from conducting medical examinations or performing procedures to collect evidence from the victims of offenses described in that subsection.
- (4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the ~~Board~~; or Board.
- (5) Employ unlicensed persons to practice nursing."

Section 3. G.S. 58-50-25 reads as rewritten:

"§ 58-50-25. *Nurses' services.*

(a) No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

(b) Nothing herein shall be construed to authorize contracting with or making payments directly to any nurse not otherwise permitted. A licensed registered nurse who has successfully completed a program established under G.S. 90-171.38(b) may receive direct payment for conducting medical examinations or medical procedures for the purpose of collecting evidence from victims of offenses described in that subsection if the payment would have otherwise been permitted."

Section 4. G.S. 143B-480.2 reads as rewritten:

"§ 143B-480.2. *Victim assistance.*

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S.

14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars (\$500.00) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) With the exception of assistance authorized under subsection (e) of this section, Assistance assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Secretary finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(e) In lieu of any payment which may otherwise have been made under subsection (b), assistance for expenses for services authorized under this section that are provided for the purpose of collecting evidence from victims of crimes identified in G.S. 90-171.38(b) may be paid directly to any licensed registered nurse who has successfully completed a program approved under G.S. 90-171.38(b). The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law upon approval of the Governor at 5:50 p.m. on the 6th day of August, 1997.

H.B. 176

CHAPTER 376

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES AND TO CLARIFY THE DUTIES OF ROLLER SKATING RINK OPERATORS AND SKATERS AT ROLLER SKATING RINKS RELAT'NG TO LIABILITY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99E.

"Equine Activity Liability.

"§ 99E-1. Definitions.

As used in this Chapter, the term:

- (1) 'Engage in an equine activity' means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term 'engage in an equine activity' does not include being a spectator at an equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.
- (2) 'Equine' means a horse, pony, mule, donkey, or hinny.
- (3) 'Equine activity' means any activity involving an equine.
- (4) 'Equine activity sponsor' means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity. The term includes operators and promoters of equine facilities.
- (5) 'Equine professional' means a person engaged for compensation in any one or more of the following:
 - a. Instructing a participant.
 - b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine.
 - c. Renting equipment or tack to a participant.
 - d. Examining or administering medical treatment to an equine.
 - e. Hooftrimming or placing or replacing horseshoes on an equine.
- (6) 'Inherent risks of equine activities' means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:
 - a. The possibility of an equine behaving in ways that may result in injury, harm, or death to persons on or around them.
 - b. The unpredictability of an equine's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.
- (7) 'Participant' means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

"§ 99E-2. Liability.

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from an equine activity sponsor, an equine professional, or any other person engaged in an equine activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

- (1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.
- (2) Provides the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine.
- (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.
- (4) Commits any other act of negligence or omission that proximately caused the injury, damage, or death.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity under liability provisions as set forth in the products liability laws.

"§ 99E-3. Warning required.

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which contain the warning notice specified in subsection (b) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional or the equine activity sponsor conducts equine activities. The warning notice specified in subsection (b) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

'WARNING

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes.'

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Chapter shall prevent an equine activity sponsor or equine professional from invoking the privileges of immunity provided by this Chapter."

Section 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 99F."Roller Skating Rink Safety and Liability."§ 99F-1. Definitions.

As used in this Chapter:

- (1) 'Operator' means a person or entity who owns, manages, controls, or directs, or who has operational responsibility for a roller skating rink.
- (2) 'Roller skater' means an individual wearing roller skates while in a roller skating rink for the purpose of recreational or competitive roller skating. 'Roller skater' includes any individual in the roller skating rink who is an invitee, whether or not this individual pays consideration.
- (3) 'Roller skating rink' means a building, facility, or premises that provide an area specifically designed to be used by the public for recreational or competitive roller skating.
- (4) 'Spectator' means an individual who is present in a roller skating rink only for the purpose of observing recreational or competitive roller skating.

"§ 99F-2. Duties of an operator.

The operator, to the extent practicable, shall:

- (1) Post the duties of roller skaters and spectators and the duties, obligations, and liabilities of the operator as prescribed in this Chapter in conspicuous places in at least three locations in the roller skating rink.
- (2) Maintain the stability and legibility of all signs, symbols, and posted notices required under subdivision (1) of this section.
- (3) Comply with all roller skating rink safety standards published by the Roller Skating Rink Operators Association, including, but not limited to, the proper maintenance of roller skating equipment and roller skating surfaces.
- (4) When the rink is open for sessions, have at least one floor guard on duty for approximately every 200 skaters.
- (5) Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session.
- (6) Maintain in good condition the railings, kickboards, and walls surrounding the skating surface.
- (7) In rinks with step-up or step-down skating surfaces, ensure that the covering on the riser is securely fastened.
- (8) Install fire extinguishers and inspect fire extinguishers at recommended intervals.
- (9) Provide reasonable security in parking areas during operational hours.
- (10) Inspect emergency lighting units periodically to ensure the lights are in proper order.
- (11) Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers.
- (12) Check rental skates on a regular basis to ensure the skates are in good mechanical condition.
- (13) Prohibit the sale or use of alcoholic beverages on the premises.

(14) Comply with all applicable State and local safety codes.

(15) Not engage willfully or negligently in any conduct that may proximately cause injury, damage, or death to a roller skater or spectator.

"§ 99F-3. Duties of a roller skater.

Each roller skater shall, to the extent commensurate with the person's age:

(1) Maintain reasonable control of his or her speed and course at all times.

(2) Heed all posted signs and warnings.

(3) Maintain a proper lookout to avoid other roller skaters and objects.

(4) Accept the responsibility for knowing the range of his or her ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.

(5) Refrain from acting in a manner that may cause or contribute to the injury of himself, herself, or any other person.

"§ 99F-4. Assumption of risk.

Roller skaters and spectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary. The obvious and necessary inherent risks include, but are not limited to, injury, damage, or death that:

(1) Results from incidental contact with other roller skaters or spectators,

(2) Results from falls caused by loss of balance, or

(3) Involves objects or artificial structures properly within the intended path of travel of the roller skater,

and that is not otherwise attributable to a rink operator's breach of the operator's duties as set forth in G.S. 99F-2.

"§ 99F-5. Defense to suit.

Assumption of risk pursuant to G.S. 99F-4 is a complete defense to a suit against an operator by a roller skater or a spectator for injuries resulting from any obvious and necessary inherent risks, unless the operator has violated the operator's duties under G.S. 99F-2."

Section 3. This act becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law upon approval of the Governor at 5:52 p.m. on the 6th day of August, 1997.

H.B. 524

CHAPTER 377

AN ACT TO INCREASE THE CAP ON THE AMOUNT OF DRIVERS LICENSE RESTORATION FEES THAT ARE DEPOSITED IN A FUND FOR ALCOHOL STUDIES ENDOWMENT AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(i1) reads as rewritten:

"(i1) **Restoration Fee.** -- Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars (\$25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars (\$50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds five ten million dollars ~~(\$5,000,000),~~ (\$10,000,000), and shall pay a restoration fee of twenty-five dollars (\$25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar (\$25.00) fee, and the first twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds five ten million dollars ~~(\$5,000,000),~~ (\$10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of five ten million dollars ~~(\$5,000,000),~~ (\$10,000,000)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law upon approval of the Governor at 8:35 a.m. on the 7th day of August, 1997.

H.B. 668

CHAPTER 378

AN ACT TO AUTHORIZE CUMBERLAND COUNTY TO REQUIRE OWNERS OF RENTAL PROPERTY IN THE COUNTY TO AUTHORIZE AN AGENT TO ACCEPT SERVICE OF PROCESS IN HOUSING CODE CASES AND CASES INITIATED BY THE LOCAL BOARD OF HEALTH.

The General Assembly of North Carolina enacts:

Section 1. The Board of County Commissioners of Cumberland County may, by ordinance, require that each nonresident owner of rental property within the county authorize a person residing in the county to serve

as the owner's agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted pursuant to Part 4 of Article 18 of Chapter 153A of the General Statutes, or Chapter 130A of the General Statutes, or a violation of local board of health rules adopted pursuant to Chapter 130A of the General Statutes. The owner shall provide the county inspections department with the authorized agent's name, address, and phone number on a form supplied by the department. The owner shall notify the inspections department of any changes in the information within 10 days after the changes occur. Nothing in this section shall require an owner to designate an agent to accept service of process if the owner of the rental property resides within Cumberland County.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law on the date it was ratified.

H.B. 448

CHAPTER 379

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"§ 20-28.2. *Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.*

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(2), 20-17(a)(2), or 20-17.2; or
- (2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(a1) As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, and 20-28.6, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

- a. The vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;
- b. If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the vehicle is subject to impoundment and forfeiture; and
- c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the vehicle owner has taken all reasonable precautions to prevent the use of the vehicle by this

particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

- (2) Innocent Party. -- A vehicle owner who:
 - a. Did not know and had no reason to know that the defendant's drivers license was revoked; or
 - b. Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission.
- (3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.
- (4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a vehicle owner in a motor vehicle in accordance with G.S. 20-28.2.
- (5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars (\$5.00) per day.
- (6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is issued.
- (7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time he the defendant committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor must shall determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he must every vehicle owner. The prosecutor shall also determine if there are any security interests lienholders noted on the vehicle's certificate of title. The State must shall notify the holder of each security interest the defendant, each vehicle owner, and each lienholder that the vehicle may be subject to forfeiture and that he the defendant, vehicle owner, or the lienholder may intervene to protect his that person's interest. If the defendant is not the owner, a similar notice must be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and must shall be served at least fourteen days before the forfeiture hearing, hearing at which an order of forfeiture may be entered.

(d) Duty of Judge. -- The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:

- (1) The vehicle is subject to forfeiture;
- (2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;

- (3) ~~All potential innocent parties have been notified as required in subsection (c); and~~
- (4) ~~No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision. The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If at the sentencing hearing, or at a subsequent hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was the only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited. If at the sentencing hearing or at a subsequent hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was not the only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited unless another vehicle owner establishes, by the greater weight of the evidence, that such vehicle owner is an innocent party as defined by subdivision (a1)(2) of this section, in which case the trial judge shall order the vehicle released to the innocent party vehicle owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:~~

- (1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or
- (2) Release the vehicle to an intervening lienholder pursuant to the provisions of subsection (g) of this section.

~~If the judge determines that the requirements of subsection (a) and (b) of this section exist but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.~~

~~(e) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

- ~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

- (2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.

If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.

(e) Return of Vehicle to Innocent Vehicle Owner. -- If a nondefendant vehicle owner establishes by the greater weight of the evidence that: (i) the vehicle was being driven by a person who was not the only vehicle owner at the time of the underlying offense and (ii) that vehicle owner requesting release is an 'innocent party', a judge shall order the vehicle returned to the owner.

This release shall only be ordered upon satisfactory proof of:

- (1) The identity of the person as a vehicle owner;
- (2) The existence of financial responsibility to the extent required by Article 13 of this Chapter;
- (3) The payment of towing and storage fees; and
- (4) The execution of an acknowledgment as defined in subdivision (a)(1) of this section.

No vehicle subject to forfeiture under this section shall be released to a vehicle owner if the records of the Division indicate the vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the vehicle while that person's license was revoked unless the innocent vehicle owner shows by the greater weight of the evidence that the vehicle owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(f) Release to Lienholder. -- The trial judge shall order a forfeited vehicle released to the lienholder if the judge determines, by the greater weight of the evidence, that:

- (1) The lienholder's interest is equal to or greater than the fair market value of the vehicle;
- (2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to the vehicle owner who owned the vehicle immediately prior to forfeiture, or any person acting on the vehicle owner's behalf;
- (3) The forfeited vehicle had not previously been released to the lienholder; and
- (4) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a)(5)."

Section 1.2. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or
- (2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle. The seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.

(c) Review by Magistrate. -- Upon seizing a vehicle, the seizing officer shall present to a magistrate within the county where the vehicle was seized an affidavit of impoundment setting forth the basis upon which the motor vehicle has been seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held. The magistrate may request additional information and may hear from the operator if the operator is present.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board and charge no fee for storage. In the alternative, the county school board may contract with a commercial storage facility for the storage of seized vehicles, and a storage fee of not more than five dollars (\$5.00) per day may be charged.

(e) Release of Vehicle Pending Trial. -- A vehicle owner, or a lienholder of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the vehicle.

The clerk shall release the vehicle to a qualified vehicle owner or a lienholder under the following conditions:

- (1) The vehicle has been stored for not less than 24 hours;
- (2) All towing and storage charges have been paid;
- (3) Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3, payable to the county school fund and conditioned on return of the vehicle, without any new or additional liens or encumbrances, on the day of trial of the operator;
- (4) If a qualified vehicle owner, execution of an acknowledgment as described in G.S. 20-28.2(a1); and
- (5) A check of the records of the Division indicates that the requesting vehicle owner has not previously executed an acknowledgment naming the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5)."

Section 1.3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-28.4. Release of impounded vehicles by judge.

(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).

(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

- (1) Is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5 due to dismissal or a finding of not guilty; or
- (2) The judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2),

the seized vehicle shall be returned to the vehicle owner.

If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.

A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this

subsection shall be paid by the county school board from forfeitures paid into the county school fund."

Section 1.4. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-28.5. Forfeiture of impounded vehicle.

(a) Sale. -- Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial sale conducted in accordance with the provisions of Parts 1 and 2 of Article 29A of Chapter 1 of the General Statutes and shall be conducted by the county school board or a person acting on its behalf. In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale shall also be given by certified mail, return receipt requested, to all vehicle owners at the address shown by the Division's records and at any other address of the vehicle owner as may be found in the criminal file in which the forfeiture was ordered. Notice of sale shall also be by certified mail, return receipt requested, to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board relieving the vehicle owner of all liability for the obligation secured by the motor vehicle.

(d) If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.

(e) Order of Forfeiture - Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 1.5. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-28.6. Forfeiture of right of registration.

(a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a motor vehicle in the person's name until the

person's drivers license is restored. The trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall order the defendant's rights of registration forfeited for the period the defendant's drivers license is revoked. The defendant shall be ordered to surrender the registration on all motor vehicles registered in the defendant's name to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register a motor vehicle in the defendant's name until the defendant's drivers license has been restored.

(b) A registered owner other than the operator of the vehicle that is seized pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2 forfeits the right to register or have registered in the person's name the motor vehicle seized, until the drivers license of the person whose driving violation resulted in the motor vehicle being seized is restored. The trial judge on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall order the registered owner's rights of registration for the seized motor vehicle forfeited for the period the defendant's drivers license is revoked after an opportunity for a hearing and a determination that the requirements of subsections (a) through (c) of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register the motor vehicle seized in the registered owner's name until the defendant's drivers license has been restored."

Section 1.6. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-28.7. *Responsibility of Division of Motor Vehicles.*

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, 20-28.5, and 20-28.6."

Section 1.7. G.S. 20-219.10(a) reads as rewritten:

"(a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

- (1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;
- (2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;
- (3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution."

Section 1.8. G.S. 1-339.4 reads as rewritten:

"§ 1-339.4. *Who may hold sale.*

An order of sale may authorize the persons designated below to hold the sale:

- (1) In any proceeding, a commissioner specially appointed therefor; or
- (2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
- (3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
- (4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
- (5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
- (6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
- (7) In a receivership proceeding, the receiver;
- (8) In a proceeding to sell property of a trust, the ~~trustee~~, trustee;
- (9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars (\$2,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least ~~14 days~~, or (ii) ~~to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license~~, license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars (\$1,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven ~~days~~ or, (ii) ~~to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S.

20-17.6 for the restoration of a drivers ~~license~~, license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) **Level Three Punishment.** -- A defendant subject to Level Three punishment may be fined up to five hundred dollars (\$500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must may be suspended, on suspended.~~ However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) Not operate a motor vehicle for a term of at least 90 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license~~, license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."~~

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) **Level Four Punishment.** -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars (\$250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment ~~must may be suspended, on suspended.~~ However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- (3) Not operate a motor vehicle for a term of 60 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license~~, license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."~~

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) **Level Five Punishment.** -- A defendant subject to Level Five punishment may be fined up to one hundred dollars (\$100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must may be suspended, on suspended.~~

However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or
- (3) Not operate a motor vehicle for a term of 30 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a ~~drivers license, license and as a condition of probation.~~ The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."~~

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any ~~treatment, treatment unless the trial judge orders that the costs be absorbed by the State.~~ The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense.~~ This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

- (1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
- (2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
- (3) The defendant may not be released on parole unless he is otherwise ~~eligible and eligible,~~ has served the mandatory minimum period of ~~imprisonment, imprisonment, and has obtained a~~ substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give

credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is ~~sentenced and sentenced~~, that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

- (1) Community service; or
- (2) Repealed by Session Laws 1995 c. 496, s. 2.
- (3) Payment of any fines, court costs, and fees; or
- (4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

- (1) The person has a right to refuse to be tested.
- (2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
- (3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
- (4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or

- b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
- (5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
- (6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16.2(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

- (1) At the time of the refusal the person held either a valid driver's drivers license or a license that had been expired for less than one year;
- (2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;
- (3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
- (4) The implied-consent offense charged did not involve death or critical injury to another person;
- (5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
 - a. Other than by conviction; or
 - b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;
- (6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~
- (7) The person's license has been revoked for at least six months for the ~~refusal~~ refusal; and
- (8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the

restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing must shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing must shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer must shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person must shall confirm the request in writing and must shall be notified:

- (1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;
- (2) That the person's license will be revoked for at least 40 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or
 - b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.
- (3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.5 is amended by adding a new subsection to read:

"(p) Limited Driving Privilege. -- A person whose drivers license has been revoked under this section may apply for a limited driving privilege if:

- (1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;
- (2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense

involving impaired driving since being charged for the violation for which the license is currently revoked under this section;

- (3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and
- (4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 10 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 10 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must shall immediately issue a pick-up order. The pick-up order must shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order must shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must shall mail to the person a revocation order by first-class mail. The order must shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must shall immediately issue a pick-up order. The pick-up order must shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

- (1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or
- (2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or
- (3) ~~Thirty~~ Forty-five days from the time:
 - a. The person's ~~driver's~~ drivers license is picked up by a law-enforcement officer following service of a pick-up order; or
 - b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or
 - c. The person's ~~driver's~~ drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or
 - d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it must shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection must shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was

surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section. A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"§ 20-138.3. *Driving by person less than 21 years old after consuming alcohol or drugs.*

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol

screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(e) (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

(d) (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the breath or blood ~~breath, blood, or other bodily fluid or substance~~ of a person to determine his the person's alcohol concentration, ~~concentration or presence of an impairing substance,~~ performed in accordance with G.S. 20-139.1. ~~G.S. 20-139.1, including duplicate or sequential analyses. The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to ~~a defendant's~~ a person's alcohol ~~concentration~~, concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

- (1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.
- (2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.
- (3) The type of chemical analysis administered and the procedures followed.
- (4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.
- (5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~ shall also include a restriction that the applicant not consume alcohol while driving or drive at any time

while he has remaining in his body any alcohol or ~~in his blood~~ a controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. HABITUAL IMPAIRED DRIVING.

Section 6. G.S. 20-138.5(b) reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a ~~Class G Class F felon~~ felon and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VII. EFFECTIVE DATES.

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

In the General Assembly read three times and ratified this the 4th day of August, 1997.

Became law upon approval of the Governor at 11:30 a.m. on the 7th day of August, 1997.

S.B. 389

CHAPTER 380

AN ACT TO ESTABLISH THE FORSYTH-GUILFORD METROPOLITAN BASEBALL PARK DISTRICT, TO PROVIDE FOR A REFERENDUM ON BASEBALL PARK FINANCING IN THE DISTRICT, AND TO ALLOW BASEBALL PARK DISTRICTS TO ENTER INTO INSTALLMENT FINANCING AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Forsyth-Guilford Metropolitan Baseball Park District is enacted as follows:

"CHARTER OF THE FORSYTH-GUILFORD METROPOLITAN BASEBALL PARK DISTRICT.

"Section 1. **Legislative Findings.** -- (a) The General Assembly determines that the construction, financing, and operation of a major league baseball park in the Triad area serves a public purpose in that it will:

- (1) Enhance the opportunities for recreational entertainment for all North Carolinians;
- (2) Generate new economic activity in the Triad area, leading to the establishment of many new businesses;
- (3) Encourage economic development throughout North Carolina by enhancing the State's attractiveness to new and relocated businesses and its attractiveness as a tourist destination; and
- (4) Provide numerous new jobs for North Carolinians.

(b) The General Assembly further determines that because constructing a major league baseball park is an extraordinarily complex task and because being able to construct such a park in as short a time as possible is crucial

to the award of a major league baseball franchise to the Triad area, it is necessary to waive the application of the usual construction contracting requirements for the park's construction.

"Sec. 2. Definitions. -- The words and phrases defined in this section have the meanings indicated when used in this Charter, unless the context clearly requires another meaning.

- (1) 'Authority' means the Forsyth-Guilford Metropolitan Baseball Park Authority.
- (2) 'District' means the Forsyth-Guilford Metropolitan Baseball Park District, established by this Charter.
- (3) 'Major League Baseball' means the organization that controls the administrative functions for the ownership and operation of major league baseball operations in the United States and Canada.
- (4) 'Major league baseball park' means a sports facility designed for use primarily as a major league baseball park or stadium. Such a facility may include, without limitation, features such as parking areas and facilities, office facilities for the District or any team or other user of the facility, associated retail and other commercial facilities, and other ancillary facilities necessary or desirable for the sports facility and its success. Such a facility also includes the landscaped grounds surrounding the baseball park and related and ancillary facilities.

"Sec. 3. District Incorporated. -- The inhabitants of the counties listed in this section are a body corporate and politic and a political subdivision of the State under the name 'Forsyth-Guilford Metropolitan Baseball Park District'. The District initially comprises the following counties: Forsyth and Guilford. If the voters in a county do not vote in favor of the question in Section 8 of this Charter, then upon the certification of the results of the election, the District is dissolved. Upon dissolution, all property of the District and all assets and liabilities of the District vest by operation of law jointly in the Counties of Forsyth and Guilford. The District is a baseball park district.

"Sec. 4. Authority Established. -- (a) The District is governed by the Authority, which has 13 members, appointed as follows:

- (1) The Governor appoints one member who shall be a resident of the District, and who shall be the chair of the Authority.
- (2) The Board of Commissioners of Forsyth County shall appoint four members who at the time of appointment were residents of Forsyth County.
- (3) The Board of Commissioners of Guilford County shall appoint four members who at the time of appointment were residents of Guilford County.
- (4) The General Assembly appoints two members upon the recommendation of the President Pro Tempore of the Senate, who at the time of their appointment were residents of the District.
- (5) The General Assembly appoints two members upon the recommendation of the Speaker of the House of Representatives,

who at the time of their appointment were residents of the District.

(b) Members of the Authority serve four-year terms, but in appointing the initial members of the Authority, the Boards of Commissioners of Forsyth and Guilford Counties shall each designate two of their appointees to serve until July 1, 1999, and two to serve until July 1, 2001, the General Assembly upon the recommendation of the Speaker of the House of Representatives and the General Assembly upon the recommendation of the President Pro Tempore shall each designate one of their appointees to serve until July 1, 1999, and one to serve until July 1, 2001. The initial appointee of the Governor serves a term expiring July 1, 2001. In making appointments under subdivisions (a)(2) and (a)(3) of this section, the appointing authority shall consider the demographic diversity of the county. If a vacancy occurs in the membership of the Authority, it shall be filled by the appointing authority for the remainder of the unexpired term. If the person causing the vacancy was appointed by the General Assembly, the vacancy shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.

(c) The Authority may elect a vice-chair and such other officers as it determines for terms established in the bylaws of the Authority.

(d) The chair of the Authority shall determine the time and place of the Authority's initial meeting and shall cause notice of the meeting to be given to each member of the Authority and to the public. Thereafter, the Authority may establish a schedule of regular meetings and may provide in its bylaws for the manner in which special meetings may be called.

(e) A majority of the members of the Authority, not counting vacant seats, constitutes a quorum. The Authority may meet by conference telephone call as provided by G.S. 143-318.13(a).

(f) The Authority may take action only upon the vote of a majority of its members, not counting vacant seats and not counting members who have disclosed a conflict of interest in the matter under discussion and vote.

(g) The Authority may adopt bylaws for the regulation of its affairs and the conduct of its business, including rules of procedure, consistent with this Charter and other applicable statutes.

(h) Members of the Authority are not compensated for their service, but the Authority may provide that members are to be reimbursed for actual expenses incurred while serving as an Authority member.

"Sec. 5. Conflicts of Interest. -- (a) G.S. 14-234 applies to the District and its employees and to the members of the Authority.

(b) If a member of the Authority, or any member of the immediate family of a member of the Authority, or the employer of a member of the Authority has a direct financial interest in any matter that comes before the Authority, the affected member shall disclose the interest and shall abstain from participating in the discussion of or vote on the matter.

(c) Violation of this section does not affect the validity of any debts or obligations incurred by the District.

"Sec. 6. District Powers. -- In addition to powers set out elsewhere in this Charter and powers granted to the District by other statutes, the District may:

- (1) Enter into contracts.
- (2) Sue and be sued in its own name, and plead and be impleaded.
- (3) Adopt an official seal.
- (4) Apply for, accept, receive, and disburse funds and grants made available to it by the United States of America or any agency thereof, the State of North Carolina or any agency thereof, any unit of local government or other political subdivision, and any private entity or person; and accept donations of property. The District may comply with the conditions and requirements respecting any gift, grant, or donation of any property or funds.
- (5) Employ and compensate such personnel as the Authority determines. The Authority may delegate to any employee of the District the authority to employ, supervise, discipline, or discharge other employees of the District. The District is subject to G.S. 153A-98 with respect to the personnel files of its employees.
- (6) Contract with consultants and other independent contractors.
- (7) Contract with and appropriate money to any person, association, or corporation, public or private, in order to carry out any public purpose that the District is authorized by this Charter or other law to engage in.
- (8) Procure insurance to protect against loss of the District's property or other assets, and against liabilities incurred by the District, the Authority, or any officer, employee, or agent of the District. The District may, pursuant to G.S. 160A-167, provide the defense of any officer or employee of the District.
- (9) Acquire and maintain administrative offices.
- (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or obtain options for the acquisition of, any real property or interest therein, in order to carry out the powers granted by this section. The District may not acquire property through the exercise of eminent domain until after Major League Baseball has announced approval of the award of a franchise for a location within the District. In exercising the power of eminent domain, the District shall follow the procedures of Chapter 40A of the General Statutes applicable to local public condemners, except that before any eminent domain proceeding may be commenced under this Charter, the board of commissioners of the county in which the property to be condemned is located must have approved of the condemnation by adoption of a resolution.
- (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant options for any such purposes with respect to, any real or personal property or interest therein. In disposing of property or any interest in property, the District may proceed under such procedures as it determines and is not subject to any procedural requirements not included in this Charter.
- (12) Promote award of a Major League Baseball franchise to a location within the District.

- (13) Design, construct, equip, improve, promote, operate, maintain, lease, or contract for the operation and maintenance of a major league baseball park. The baseball park shall be located on a tract of land at least forty percent (40%) of which is located in each of the two most populous counties in the district, according to the most recent decennial federal census. In light of the findings made by Section 1(b) of this Charter in the application of G.S. 143-135.26(9)b., the State Building Commission shall grant to the District whatever necessary waivers are authorized by G.S. 143-135.26(9) in order to expedite the construction of the major league baseball park if the District demonstrates to the Commission that such waivers, if any, are necessary to expedite the project. Specifically, if approval is received to move a Major League Baseball franchise to a location within the District, and a condition of moving of the franchise is expedited construction of the major league baseball park, then the Commission shall consider that relocation when acting on the request of the District.

The State Building Commission alternatively may allow the District to contract with the entity that has been awarded the Major League Baseball franchise for that entity, or an affiliated, parent, or subsidiary entity, to construct the baseball park, with clear title to the baseball park passing to the District at the completion of construction, and in such case construction is not subject to State laws on public contract bidding, but the State Building Commission shall condition its approval with requirements that the entity constructing the baseball park use procedures to ensure that all qualified persons are afforded an opportunity to present bids, and bids are evaluated fairly, and the entity constructing the park shall use North Carolina contractors where feasible.

The District may contract for the right to name any park or other facility owned by the District, or may include the right to contract for the park's or facility's name in any lease of or contract for the operation of the park or facility.

- (14) Acquire real property or interests in real property for highway improvements that will benefit the major league baseball park, and convey, with or without monetary consideration, such property or interests in property to the Department of Transportation. The District may not acquire property for highway improvements through the exercise of eminent domain until after Major League Baseball has announced approval of the award of a franchise for a location within the District. In the acquisition by eminent domain of such real property or interests in real property, the District may use the procedures of Article 9 of Chapter 136 of the General Statutes. For the purpose of this subdivision, whenever the words 'Department of Transportation' appear in Article 9, they are deemed to include the District or Authority, and whenever the words 'Administrator',

'Administrator of Highways', 'Administrator of the Department of Transportation', or 'Chairman of the Department of Transportation' appear in Article 9, they are deemed to include an appropriate official of the District as designated by the Authority.

- (15) Establish and collect fees and charges for the use of its facilities.
- (16) Enter into partnerships, joint ventures, common ownership, operating agreements, and other arrangements with other persons to further District purposes.
- (17) Do all acts and things necessary, convenient, or desirable to carry out the purposes of and exercise the powers granted to it by this Charter.

"Sec. 7. Triple Net Lease Required. -- Any lease of the baseball park for the purpose of operating it for Major League Baseball must be triple net for a minimum of 25 years, with the lessee responsible for upkeep and maintenance.

"Sec. 8. District Taxes. -- (a) Authorization. -- The Authority may, by resolution, subject to the conditions set out in this subsection and in Sections 9 and 10 of this Charter, levy one or both of the following taxes within the District: (i) a local tax on prepared food and beverages as provided in Section 9 of this Charter and (ii) a local tax on admissions to major league baseball parks as provided in Section 10 of this Charter. Before it may adopt a resolution under this section, however, the following conditions must be met:

- (1) Major League Baseball must have announced approval of the award of a franchise for a location within the District no later than December 31, 2001.
- (2) The District's voters must have approved the levy of the taxes in a referendum called and held for that purpose.

(b) Use of Proceeds. -- The Authority may use the proceeds of the taxes levied pursuant to this Charter for any authorized activities of the District. Any of these proceeds used to design, construct, equip, or improve a major league baseball park as provided in Section 6(13) of this Charter must be matched by private funds on the basis of at least one dollar (\$1.00) of private funds used for this purpose for every two dollars (\$2.00) of these proceeds used for this purpose. Any of these proceeds not matched as required in this subsection shall not be used to design, construct, equip, or improve a major league baseball park as provided in Section 6(13) of this Charter.

In addition, the net proceeds of the tax authorized in Section 9 of this Charter may be used to finance a principal amount of no more than one hundred forty million dollars (\$140,000,000) for this purpose, plus interest, issuance costs, and the remaining components of related debt service. The tax authorized in Section 9 of this Charter sunsets as provided in Section 9 after the cumulative net proceeds equal the amount necessary to finance a principal amount of one hundred forty million dollars (\$140,000,000), plus interest, issuance costs, and the remaining components of related debt service. Any proceeds collected in excess of this amount shall not be used

to design, construct, equip, or improve a major league baseball park as provided in Section 6(13) of this Charter.

(c) Referendum. -- The State Board of Elections shall, upon the written request of the Authority, call a referendum for the purpose of submitting to the voters of the District the question of whether a prepared food and beverage tax at the rate of one percent (1%) and a major league baseball park admission tax at the rate of fifty cents (50¢) shall be levied in the District. The date of the referendum shall be the date of the statewide primary election in 1998. Notice of the referendum shall be given in the manner and at the times required by G.S. 163-33(8). The referendum and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the referendum.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The question to be presented on the ballots or voting systems shall be as follows:

'MAJOR LEAGUE BASEBALL PARK INITIATIVE

[] YES [] NO

When Major League Baseball has announced approval of a major league baseball franchise for a location within the Forsyth-Guilford Metropolitan Baseball Park District, may Guilford and Forsyth Counties, which compose the district, help finance no more than two-thirds of the cost of a major league baseball park through the levy of a local tax on sales of prepared food and beverages at the rate of one percent (1%) and a local tax of fifty cents (50¢) on admissions to major league baseball parks?"

The results of the referendum shall be canvassed and declared as provided by law for elections of State officers; the results of the referendum shall be certified by the State Board of Elections to the Authority in the manner and at the time provided by the general election laws of the State for certifications of State elections. If a majority of persons voting in the referendum in both counties vote in favor of levying the tax, the issue is approved. The votes shall be tallied separately in each county in the District. If the voters of one or both counties do not vote in favor of the question, the issue is not approved.

"Sec. 9. **Prepared Food and Beverage Tax.** -- (a) Authorization. -- If the conditions of Section 8(a) of this Charter are met, and if the Authority has levied the admissions tax provided in Section 10 of this Charter, the Authority may, by resolution, levy a prepared food and beverage tax of one percent (1%) of the sales price of prepared food and beverages sold within the District at retail, for consumption on or off the premises, by a retailer within the District that is subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The authority to levy this tax remains in effect only if the Authority continues to levy the admissions tax provided in Section 10 of this Charter. If the Authority repeals the admissions tax provided in Section 10, the tax authorized in this section is repealed on the effective date of the repeal of the admissions tax.

(b) Definitions; Sales and Use Tax Statutes. -- The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with this section. In addition, the term 'prepared food and beverages' means any meals, food, or beverages which a retailer has added value to or whose state has been altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make it available for immediate human consumption. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section.

(c) Exemptions. -- The prepared food and beverage tax does not apply to the following sales of prepared food and beverages:

- (1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of a sleeping room or lodging.
- (2) Retail sales exempt from taxation under G.S. 105-164.13.
- (3) Retail sales through or by means of vending machines.
- (4) Prepared food and beverages served by a retailer subject to the local occupancy tax if the charge for the meals or prepared food or beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.
- (5) Prepared food and beverages furnished without charge by an employer to an employee.
- (6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments, other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.

(d) Collection. -- Every retailer subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing prepared food and beverages. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the retailer as trustee for and on account of the District. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The Authority shall design, print, and furnish to all appropriate businesses and persons in the District the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(e) Administration. -- The Authority shall administer a tax levied under this section. A tax levied under this section is due and payable to the Authority in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every retailer liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the Authority. The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the Authority finance officer under this section is not a public record and may not be disclosed except to the same extent as provided in G.S. 153A-148.1 as if the District were a county.

(f) Refunds. -- The Authority shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) shall apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverage tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the Authority to substantiate the claim.

(g) Penalties. -- A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Authority has the same authority to waive the penalties for a tax levied under this section that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(h) Effective Date of Levy. -- A tax levied under this section shall become effective on the date specified in the resolution levying the tax. The date must be the first day of a calendar month and may not be before the first day of the fourth month after the date that the resolution is adopted.

(i) Repeal. -- A tax levied under this section may be repealed by a resolution adopted by the Authority. Any repeal shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution is adopted. A tax levied under this section may also be repealed as provided in subsection (a) or (j) of this section. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

(j) Sunset. -- The authority to levy a tax under this section is repealed effective on the first day of the fourth calendar month after all debt incurred to design, construct, equip, and improve a major league baseball park has been retired, as determined by the Finance Officer of the Authority. Any tax levied under this section is repealed effective on that date. In addition, the authority to levy a tax under this section is repealed effective on the first day of the fourth calendar month after the cumulative net proceeds of the tax equal the amount necessary to finance a principal amount of one hundred forty million dollars (\$140,000,000), plus interest, issuance costs, and the remaining components of related debt service, as determined by the Finance Officer of the Authority. Any tax levied under this section is repealed effective on that date.

"Sec. 10. Major League Baseball Park Admissions Tax. -- (a) Authorization and scope. Notwithstanding the provisions of G.S. 105-

37.1(b), the Authority may, by resolution, levy an admissions tax on every person, firm, or corporation offering or managing any form of entertainment, amusement, or athletic or commercial event for which an admission is charged and which is presented in the District in a major league baseball park. The tax shall be at a rate of fifty cents (50¢) per seat or admission sold. This tax is in addition to any State or local tax.

(b) Collection. -- Every person, firm, or corporation selling admissions taxable under this section shall, on and after the effective date of the levy, collect the tax. This tax shall be collected at the same time as the charge for furnishing a taxable admission and shall be paid by the purchaser to the seller of the admission as trustee for and on account of the District. The tax shall be stated and charged separately from the sales price and shall be added to the admissions price and passed on to the purchaser instead of being borne by the seller.

(c) Administration. -- The Authority shall administer a tax levied under this section. A tax levied and collected under this section is due and payable to the Authority on or before the 15th day of the month following the month in which the tax is collected. Every person, firm, or corporation liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the Authority. The return shall state the total number of admissions subject to the tax that were sold in the preceding month.

A return filed with the Authority Finance Officer under this section is not a public record and may not be disclosed except to the same extent as provided in G.S. 153A-148.1 as if the District were a county.

(d) Penalties. -- A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Authority has the same authority to waive the penalties for a tax levied under this section that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) Effective Date of Levy. -- A tax levied under this section shall become effective on the date specified in the resolution levying the tax. The date must be the first day of a calendar month and may not be before the first day of the fourth month after the date that the resolution is adopted.

(f) Repeal. -- A tax levied under this section may be repealed by a resolution adopted by the Authority. Any repeal shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution is adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

"Sec. 11. **Budgeting and Fiscal Control.** -- The District is a unit of local government under the Local Government Budget and Fiscal Control Act.

"Sec. 12. **Assistance From Local Governments.** -- Any county, city or town, or other unit of local government or public authority located within the District may contribute or advance moneys or other assets or services to the District. The District may reimburse a local government or public

authority for any such advance once it is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise has funds available to do so.

"Sec. 13. **Zoning and Annexation.** -- (a) The District may regulate land use upon real property owned by it, and such property is not subject to any zoning ordinance adopted by a county or city.

(b) Real property owned by the District is not subject to annexation pursuant to Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes.

"Sec. 14. **Recognition of Contributions.** -- (a) The Authority shall provide for plaques at each entrance to the baseball park recognizing the contributions of the taxpayers of Forsyth and Guilford Counties to the financing of the park.

(b) The Authority shall provide in any lease or otherwise for suitable space to be available in the baseball park for the use of Forsyth County and Guilford County each to display information about those counties. The content of the display shall be in the discretion of the respective county. No charge shall be made for the use of the space for that purpose.

(c) The Authority shall provide in any lease or otherwise for suitable space to be available in the baseball park for the displays about restaurants in Forsyth County and Guilford County. No charge shall be made for the use of the space for that purpose."

Section 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 160C.

"Baseball Park Districts.

"§ 160C-1. Baseball park districts.

The General Assembly may establish baseball park districts as bodies politic and corporate and political subdivisions of the State.

"§ 160C-2. Assessments.

(a) If a city or county or any joint city-county agency extends water or sewer lines to serve a major league baseball park constructed by a baseball park district, it shall either not assess property owners (other than the baseball park district or a lessee of that district) or hold any assessments in abeyance until the property owner taps on to the water line or connects to the sewer line. This section does not grant any additional authority to make assessments.

(b) This section prevails over any local act."

Section 3. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.
- (6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- (9) A baseball park district."

Section 4. G.S. 159-148(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of the General Statutes, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General Statutes), relating to the lease, acquisition, or construction of capital assets, which contract

- (1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and
- (2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract, and
- (3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of at least five hundred thousand dollars (\$500,000) for baseball park districts and, for other units, to the extent of five hundred thousand dollars (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of the assessed value of property subject to taxation by the contracting unit, whichever is less, and
- (4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall

be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 1:40 p.m. on the 7th day of August, 1997.

H.B. 239

CHAPTER 381

AN ACT TO SPECIFY THAT ONE MEMBER OF THE ENVIRONMENTAL MANAGEMENT COMMISSION SHALL HAVE EMPLOYMENT EXPERIENCE IN INDUSTRIAL AIR AND WATER POLLUTION CONTROL AT AN INDUSTRIAL MANUFACTURING FACILITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-283(a) reads as rewritten:

"(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

- (1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;
- (2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have experience in health sciences;
- (3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;
- (4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;
- (5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;
- (6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;
- (7) Three members interested in water and air pollution control, appointed from the public at large;
- (8) One who shall, at the time of appointment, be actively ~~connected with employed by, or recently retired from, an industrial production or have had experience~~ maneuvering facility and knowledgeable in the field of industrial air and water pollution control;

- (9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;
- (10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and
- (11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences."

Section 2. This act is effective when it becomes law and applies to any appointment to the Environmental Management Commission pursuant to G.S. 143B-283(a)(8), as amended by Section 1 of this act, made on or after the date this act becomes effective.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 8:23 p.m. on the 11th day of August, 1997.

H.B. 408

CHAPTER 382

AN ACT TO CREATE A FUEL PIPING LICENSE FOR PLUMBING AND HEATING CONTRACTORS, TO AUTHORIZE THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS TO CREATE OTHER RESTRICTED LICENSE CLASSIFICATIONS, TO ALLOW THE REVOCATION OR SUSPENSION OF A LICENSE FOR FAILURE TO COMPLY WITH RULES PROMULGATED BY THE BOARD, AND TO CLARIFY WHEN A PERSON PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS IS EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21(b) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. --

- (1) In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings.
- (2) Effective April 15, 1998, the Board shall establish and issue a fuel piping license for use by persons who do not possess the required Class I or Class II plumbing or heating license, but desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used partly or entirely to supply fuel to plumbing or heating systems or equipment or which, by its installation, may alter or affect the fuel supply to plumbing or

heating systems or equipment within the meaning of G.S. 87-21(a).

The Board may also establish additional restricted classifications to provide for: (i) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting; (ii) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting; or (iii) the licensing of persons desiring to engage in contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

- (3) The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience.
- (4) Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, or each restricted classification, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.
- (5) The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group

number two, or heating group number three, or fire sprinkler contracting, or any combination thereof. The Board is also authorized to issue a certificate of license limited to one or more restricted classifications that are established pursuant to this section.

- (6) Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination."

Section 2. G.S. 87-22 reads as rewritten:

"§ 87-22. *License fee based on population; expiration and renewal; penalty.*

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay an annual license fee not exceeding seventy-five dollars (\$75.00), and in cities or towns of less than 10,000 inhabitants an annual license fee not exceeding fifty dollars (\$50.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars (\$75.00) and an annual license fee not to exceed three hundred dollars (\$300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to his the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of said the license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the Board shall increase said the license fee ten per centum (10%) for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not

exceed the amount of the annual fee, and provided further that the Board requires reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew his the license at a fee not to exceed twenty-five dollars (\$25.00)."

Section 3. G.S. 87-23(a) reads as rewritten:

"(a) The Board shall have power to revoke or suspend the license of or order the reprimand or probation of any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is guilty of any fraud or deceit in obtaining or renewing a license, or who fails to comply with any provision or requirement of this Article, or the rules adopted by the Board, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of a plumbing, heating, or fire sprinkler contractor, or any combination thereof, as defined in this Article. Any person may prefer charges of such fraud, deceit, ~~gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this Article, or the rules of the Board,~~ against any plumbing, heating, or fire sprinkler contractor, or any combination thereof, who is licensed under the provisions of this Article. All of such the charges shall be in writing and verified by the complainant, and such charges shall be heard and determined investigated by the Board. Any proceedings on the charges shall be carried out by the Board in accordance with the provisions of Chapter 150B of the General Statutes."

Section 4. G.S. 87-21(c1), as enacted by S.L. 1997-298, reads as rewritten:

"(c1) Exemption. -- The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S. 143-143.9(6), if the person (i) is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or a full-time employee of either, (ii) ~~secures a permit from~~ obtains an inspection by the local inspections department and (iii) performs the assembly according to the State Plumbing Code."

Section 5. Sections 1 through 3 of this act become effective October 1, 1997. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 8:25 p.m. on the 11th day of August, 1997.

H.B. 510

CHAPTER 383

AN ACT TO ALLOW THE STATE BOARD OF EDUCATION TO
ADOPT POLICIES SETTING MINIMUM SCORES FOR
CERTIFICATION OF PROFESSIONAL SCHOOL PERSONNEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296 is amended by adding a new subsection to read:

"(a) The State Board shall adopt policies that establish the minimum scores for the standard examinations and other measures necessary to assess the qualifications of professional personnel as required under subsection (a) of this section. For purposes of this subsection, the State Board shall not be subject to Article 2A of Chapter 150B of the General Statutes. At least 30 days prior to changing any policy adopted under this subsection, the State Board shall provide written notice to all North Carolina schools of education and to all local boards of education. The written notice shall include the proposed revised policy."

Section 2. Immediately upon adopting policies under this act, all administrative rules previously adopted by the State Board of Education regarding the minimum scores for the standard examinations for certification of professional personnel are repealed. The State Board of Education shall notify the Codifier of Rules when it adopts policies under this act. Upon receiving notification that a rule has been repealed under this act, the Codifier of Rules shall enter the repeal of the rule in the North Carolina Administrative Code.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 8:27 p.m. on the 11th day of August, 1997.

S.B. 168

CHAPTER 384

AN ACT TO INCREASE THE EXAMINATION AND CERTIFICATION FEES COLLECTED UNDER THE NURSING PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.27(b) reads as rewritten:

"(b) The schedule of fees shall not exceed the following rates:

Application for examination leading to certificate and license as registered nurse	\$45.00	\$75.00
Application for certificate and license as registered nurse by endorsement	75.00	150.00
Application for each re-examination leading to certificate and license as registered nurse	45.00	75.00
Renewal of license to practice as registered nurse (two-year period)	50.00	100.00
Reinstatement of lapsed license to practice as a registered nurse and renewal fee	90.00	180.00
Application for examination leading to certificate and license as licensed practical nurse by examination	45.00	75.00
Application for certificate and license as licensed practical nurse by endorsement	75.00	150.00

Application for each re-examination leading to certificate and license as licensed practical nurse	45.00	<u>75.00</u>
Renewal of license to practice as a licensed practical nurse (two-year period)	50.00	<u>100.00</u>
Reinstatement of lapsed license to practice as a licensed practical nurse and renewal fee	90.00	<u>180.00</u>
Reasonable charge for duplication services and materials.		

A fee for an item listed in this schedule shall not increase from one year to the next by more than twenty percent (20%)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 8:27 p.m. on the 11th day of August, 1997.

S.B. 571

CHAPTER 385

AN ACT TO PLACE ON THE SCHEDULE II CONTROLLED SUBSTANCES LIST THE DRUG REMIFENTANIL AND SALTS THEREOF, IN ACCORDANCE WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-90(b) reads as rewritten:

"(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

01. Alfentanil.
 1. Alphaprodine.
 2. Anileridine.
 3. Bezitramide.
 - 3a. Carfentanil.
 4. Dihydrocodeine.
 5. Diphenoxylate.
 6. Fentanyl.
 7. Isomethadone.
 - 7a. Levo-alpha-acetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
 8. Levomethorphan.
 9. Levorphanol.
 10. Metazocine.
 11. Methadone.
 12. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
 13. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
 14. Pethidine.

15. Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Sufentanil.
23. Remifentanil."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 8:32 p.m. on the 11th day of August, 1997.

S.B. 250

CHAPTER 386

AN ACT TO CLARIFY PERFECTION OF A SECURITY INTEREST IN AFTER-ACQUIRED REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-20.5(c) reads as rewritten:

"(c) An after-acquired property clause is effective to pass after-acquired property as between the parties to the instrument containing such clause, but shall not be effective to pass title to after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument unless and until such instrument has been registered or reregistered at or subsequent to the time such after-acquired property is acquired by such ~~grantor~~ grantor and the deed to the grantor of the after-acquired property is registered."

Section 2. This act is effective when it becomes law and applies to instruments registered before, on, or after the effective date except that it shall not apply to litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date.

In the General Assembly read three times and ratified this the 31st day of July, 1997.

Became law upon approval of the Governor at 8:38 p.m. on the 11th day of August, 1997.

S.B. 660

CHAPTER 387

AN ACT TO LICENSE ATHLETIC TRAINERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.
"Athletic Trainers.

"§ 90-522. Title; purpose.

(a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

(b) The practice of athletic trainer services affects the public health, safety, and welfare. Licensure of the practice of athletic trainer services is necessary to ensure minimum standards of competency and to provide the public with safe athletic trainer services. It is the purpose of this Article to provide for the regulation of persons offering athletic trainer services.

"§ 90-523. Definitions.

The following definitions apply in this Article:

- (1) Athletic trainer. -- A person who, under a written protocol with a physician licensed under Article 1 of Chapter 90 of the General Statutes and filed with the North Carolina Medical Board, carries out the practice of care, prevention, and rehabilitation of injuries incurred by athletes, and who, in carrying out these functions, may use physical modalities, including heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment. A committee composed of two members of the North Carolina Medical Board and two members of the North Carolina Board of Athletic Trainer Examiners shall jointly define by rule the content, format, and minimum requirements for the written protocol required by this subdivision. The members shall be selected by their respective boards. The decision of this committee shall be binding on both Boards unless changed by mutual agreement of both Boards.
- (2) Board. -- The North Carolina Board of Athletic Trainer Examiners as created by G.S. 90-524.
- (3) License. -- A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90-528 entitling the person to perform the functions and duties of an athletic trainer.
- (4) Athletes. -- Members of sports teams, including professional, amateur, and school teams; or participants in sports or recreational activities, including training and practice activities, that require strength, agility, flexibility, range of motion, speed, or stamina.

"§ 90-524. Board of Examiners created.

(a) The North Carolina Board of Athletic Trainer Examiners is created.

(b) Composition and Terms. -- The Board shall consist of seven members who shall serve staggered terms. Four members shall be athletic trainers certified by the National Athletic Trainers' Association Board of Certification, Inc. One member shall be a licensed orthopedic surgeon, one member shall be a licensed family practice physician or pediatrician, and one member shall represent the public at large.

The initial Board members shall be selected on or before August 1, 1997, as follows:

- (1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint two certified

athletic trainers and an orthopedic surgeon. The certified athletic trainers shall serve for terms of three years, and the orthopedic surgeon shall serve for a term of one year.

- (2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two certified athletic trainers and a family practice physician or pediatrician. The certified athletic trainers and the family practice physician or pediatrician shall serve for terms of two years.

- (3) The Governor shall appoint for a three-year term a public member to the Board.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(c) Qualifications. -- The athletic trainer members shall hold current licenses and shall reside or be employed in North Carolina. They shall have at least five years' experience as athletic trainers, including the three years immediately preceding appointment to the Board, and shall remain in active practice and in good standing with the Board as a licensee during their terms. The first athletic trainers appointed to the Board pursuant to this section shall be eligible for licensure under G.S. 90-529 and, upon appointment, shall immediately apply for a license.

(d) Vacancies. -- A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. -- The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. -- Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed athletic trainer, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. -- The Board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving athletic training services. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Board members constitutes a quorum.

"§ 90-525. Powers of the Board.

The Board shall have the power and duty to:

- (1) Administer this Article.
- (2) Issue interpretations of this Article.

- (3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
- (4) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.
- (5) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.
- (6) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Article.
- (7) In accordance with G.S. 90-534, set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this Article.
- (8) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.
- (9) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.
- (10) Develop standards and adopt rules for the improvement of athletic training services in the State.
- (11) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by it.

"§ 90-526. Custody and use of funds; contributions.

(a) All fees payable to the Board shall be deposited in the name of the Board in financial institutions designated by the Board as official depositories and shall be used to pay all expenses incurred in carrying out the purposes of this Article.

(b) The Board may accept grants, contributions, bequests, and gifts that shall be kept in a separate fund and shall be used by it to enhance the practice of athletic trainers.

"§ 90-527. License required; exemptions from license requirement.

(a) On or after January 1, 1998, no person shall practice or offer to practice as an athletic trainer, perform activities of an athletic trainer, or use any card, title, or abbreviation to indicate that the person is an athletic trainer unless that person is currently licensed as provided by this Article.

(b) The provisions of this Article do not apply to:

- (1) Licensed, registered, or certified professionals, such as nurses, physical therapists, and chiropractors if they do not hold themselves out to the public as athletic trainers.
- (2) A physician licensed under Article 1 of Chapter 90 of the General Statutes.
- (3) A person serving as a student-trainer or in a similar position under the supervision of a physician or licensed athletic trainer.
- (4) An athletic trainer who is employed by, or under contract with, an organization, corporation, or educational institution located in another state and who is representing that organization, corporation, or educational institution at an event held in this State.

- (5) Boxing trainers, if they do not hold themselves out to the public as athletic trainers.

"§ 90-528. Application for license; qualifications; issuance.

(a) An applicant for a license under this Article shall make a written application to the Board on a form approved by the Board and shall submit to the Board an application fee along with evidence that demonstrates good moral character and graduation from an accredited four-year college or university in a course of study approved by the Board.

(b) The applicant shall also pass the examination administered by the National Athletic Trainers' Association Board of Certification, Inc.

(c) When the Board determines that an applicant has met all the qualifications for licensure and has submitted the required fee, the Board shall issue a license to the applicant. A license is valid for a period of one year from the date of issuance and may be renewed subject to the requirements of this Article.

"§ 90-529. Athletic trainers previously certified.

The Board shall issue a license to practice as an athletic trainer to a person who applies to the Board on or before August 1, 1998, and furnishes to the Board on a form approved by the Board proof of good moral character, graduation from an accredited four-year college or university in a course of study approved by the Board, and a current certificate from the National Athletic Trainers' Association Board of Certification, Inc.

"§ 90-530. Athletic trainers not certified.

(a) A person who has been actively engaged as an athletic trainer since August 1, 1994, and who continues to practice up to the time of application, shall be eligible for licensure without examination by paying the required fee and by demonstrating the following:

- (1) Proof of good moral character.
- (2) Proof of practice in this State since August 1, 1994.
- (3) Proof of graduation from an accredited four-year college or university in a course of study approved by the Board.
- (4) Fulfillment of any other requirements set by the Board.

An application made pursuant to this section shall be filed with the Board on or before August 1, 1998.

(b) A person is 'actively engaged' as an athletic trainer if the person is a salaried employee of, or has contracted with, an educational institution, an industry, a hospital, a rehabilitation clinic, or a professional athletic organization or another bona fide athletic organization and the person performs the duties of an athletic trainer.

"§ 90-531. Reciprocity with other states.

A license may be issued to a qualified applicant holding an athletic trainer license in another state if that state recognizes the license of this State in the same manner.

"§ 90-532. License renewal.

Every license issued under this Article shall be renewed during the month of January. On or before the date the current license expires, any person who desires to continue practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall automatically lapse. In accordance with rules adopted by the Board, a license that has

lapsed may be reissued within five years from the date it lapsed. A license that has been expired for more than five years may be reissued only in a manner prescribed by the Board.

"§ 90-533. Continuing education.

(a) As a condition of license renewal, a licensee must meet the continuing education requirements set by the Board. The Board shall determine the number of hours and subject matter of continuing education required as a condition of license renewal. The Board shall determine the qualifications of a provider of an educational program that satisfies the continuing education requirement.

(b) The Board shall grant approval to a continuing education program or course upon finding that the program or course offers an educational experience designed to enhance the practice of athletic trainer, including the continuing education program of the National Athletic Trainers' Association.

(c) If a continuing education program offers to teach licensees to perform advanced skills, the Board may grant approval for the program when it finds that the nature of the procedure taught in the program and the program facilities and faculty are such that a licensee fully completing the program can reasonably be expected to carry out those procedures safely and properly.

"§ 90-534. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the State treasury.

(b) The schedule of fees shall not exceed the following:

<u>(1) Issuance of a license</u>	<u>\$100.00</u>
<u>(2) License renewal</u>	<u>50.00</u>
<u>(3) Reinstatement of lapsed license</u>	<u>75.00</u>
<u>(4) Reasonable charges for duplication services and material.</u>	

"§ 90-535. Hiring of athletic trainers by school units.

Local school administrative units may hire persons who are not licensed under this Article. The persons hired may perform the activities of athletic trainers in the scope of their employment but may not claim to be licensed under this Article. The persons hired may not perform the activities of athletic trainers outside the scope of this employment unless they are authorized to do so under G.S. 90-527(b).

"§ 90-536. Disciplinary authority of the Board; administrative proceedings.

(a) Grounds for disciplinary action against a licensee shall include the following:

- (1) Giving false information or withholding material information from the Board in procuring a license to practice as an athletic trainer.
- (2) Having been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as an athletic trainer or that indicates that the person has deceived or defrauded the public.

- (3) Having a mental or physical disability or using a drug to a degree that interferes with the person's fitness to practice as an athletic trainer.
- (4) Engaging in conduct that endangers the public health.
- (5) Being unfit or incompetent to practice as an athletic trainer by reason of deliberate or negligent acts or omissions regardless of whether actual injury to a patient is established.
- (6) Willfully violating any provision of this Article or rules adopted by the Board.
- (7) Having been convicted of or pled guilty or no contest to an offense under State or federal narcotic or controlled substance laws.

(b) In accordance with Article 3A of Chapter 150B of the General Statutes, the Board may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend any license to practice as an athletic trainer in North Carolina or deny any application for licensure if the Board determines that the applicant or licensee has committed any of the above acts or is no longer qualified to practice as an athletic trainer. The Board may reinstate a revoked license or remove licensure restrictions when it finds that the reasons for revocation or restriction no longer exist and that the person can reasonably be expected to practice as an athletic trainer safely and properly.

"§ 90-537. Enjoining illegal practices.

If the Board finds that a person who does not have a license issued under this Article claims to be an athletic trainer or is engaging in practice as an athletic trainer in violation of this Article, the Board may apply in its own name to the Superior Court of Wake County for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation.

"§ 90-538. Penalties.

A person who does not have a license issued under this Article who either claims to be an athletic trainer or engages in practice as an athletic trainer in violation of this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"§ 90-539. Reports; immunity from suit.

A person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that a person is in violation of this Article, shall report the relevant facts to the Board. Upon receipt of a charge, or upon its own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. A person who, in good faith, makes a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom.

"§ 90-540. No third-party reimbursement required.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 1997.

Became law upon approval of the Governor at 8:40 a.m. on the 13th day of August, 1997.

H.B. 611

CHAPTER 388

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-82 reads as rewritten:

"§ 148-82. Provision for compensation.

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be ~~pardoned~~ granted a pardon of innocence by the Governor upon the grounds that ~~the crime with which he the person was charged~~ either was not committed at all or was not committed by ~~him, that person,~~ may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by ~~him~~ the person through his or her erroneous conviction and ~~imprisonment.~~ imprisonment, provided the petition is presented within five years of the granting of the pardon."

Section 2. G.S. 148-83 reads as rewritten:

"§ 148-83. Form, requisites and contents of petition; nature of hearing.

Such petition shall be addressed to the ~~Department of Correction,~~ Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor."

Section 3. G.S. 148-84 reads as rewritten:

"§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of compensation.

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the ~~Parole~~ Industrial Commission finds from the evidence that the claimant ~~was pardoned~~ received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the ~~Parole~~ Industrial Commission shall report the facts, together with

~~his [its] conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars (\$500.00) funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars (\$10,000) for each year or the pro rata amount for the portion of each year of such the imprisonment actually served; and served, but in no event shall such the compensation exceed a total amount of five thousand dollars (\$5,000). one hundred fifty thousand dollars (\$150,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."~~

Section 4. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(14) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment."

Section 5. Section 4 of this act is effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

Became law upon approval of the Governor at 8:45 a.m. on the 13th day of August, 1997.

H.B. 866

CHAPTER 389

AN ACT TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM, AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS, AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. (a) The Board of Education of Moore County consists of eight members.

(b) One member of the Moore County Board of Education shall be elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore County Board of Commissioners as those districts existed on January 1, 1997, and three members of the Moore County Board of Education shall be elected from the County at large.

(c) Of the existing Moore County Board of Education members, Mike Ritter is assigned to District 1; Ken Baer is assigned to District 2; Bill Garner is assigned to District 3; Linda McCaskill is assigned to District 4; and Dianne Lawrence is assigned to District 5. In 1998 and quadrennially thereafter, a member shall be elected from District 3 and three members shall be elected from the county at large for four-year terms. In 2000 and quadrennially thereafter, members shall be elected from Districts 1, 2, 4, and 5 for four-year terms.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large by the nonpartisan primary and election method, all as previously provided by law.

Section 2. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 1 of this act. The question on the ballot shall be:

"[] FOR [] AGAINST

Providing that five of the Moore County Board of Education members have the same districts as the Moore County Board of County Commissioners and that three of the Moore County Board of Education members be elected at large."

If a majority of the votes cast are FOR the question, then Section 1 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 1 of this act does not become effective.

Section 3. Notwithstanding any provision of Section 1(d) of this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the members of the Moore County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1.

Section 4. Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 3 of this act. The question on the ballot shall be:

"[] FOR [] AGAINST

Election of the Moore County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 3 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 3 of this act does not become effective.

Section 5. (a) Effective July 1, 1998, the Board of Education of Carteret County consists of seven members.

(b) One member of the Carteret County Board of Education shall be elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two members of the Carteret County Board of Education shall be elected from District 3 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993.

(c) Of the existing members, Roger Newby is assigned to District 2, Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member from District 4 for a two-year term. In 2000 and quadrennially thereafter, one member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for a four-year term.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large in nonpartisan plurality elections at the time of the primary election and take office on July 1 of the year of election, all as previously provided by law.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1997.

Became law on the date it was ratified.

H.B. 896

CHAPTER 390

AN ACT TO AMEND THE LAW PERTAINING TO THE CUSTODY AND PLACEMENT OF JUVENILES TO ENHANCE THE STATE'S ABILITY TO ENSURE THAT JUVENILES ARE PLACED IN A SAFE, PERMANENT HOME WITHIN A REASONABLE PERIOD OF TIME, TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO ASSUME CONTROL OF DELIVERY OF COUNTY CHILD WELFARE SERVICES UNDER CERTAIN CIRCUMSTANCES, AND TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.32(3) reads as rewritten:

"(3) The parent has willfully left the child in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. ~~child or without showing positive response within 12 months to the diligent efforts of a county Department of Social Services, a child-caring institution or licensed child placing agency to encourage the parent to strengthen the parental relationship to the child or to make and follow through with~~

~~constructive planning for the future of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty."~~

Section 2. G.S. 7A-289.32(7) reads as rewritten:

"(7) That the parent is incapable ~~as a result of mental retardation, mental illness, organic brain syndrome, or any other degenerative mental condition~~ of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue ~~throughout the minority of the child, for the foreseeable future.~~ Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition."

Section 3. G.S. 7A-517 is amended by adding the following new subdivisions to read:

"(25a) 'Reasonable efforts'. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.

(25b) 'Safe home'. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect."

Section 3.1. G.S. 7A-544 reads as rewritten:

"§ 7A-544. *Investigation by Director; access to confidential information; notification of person making the report.*

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

~~When a report of a juvenile's death as a result of suspected maltreatment~~ abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection.

If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a

petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3.2. G.S. 7A-517(21) reads as rewritten:

"(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has ~~died as a result of abuse or neglect or lives in a home where another juvenile has been subjected to sexual abuse or severe physical abuse or neglect~~ by an adult who regularly lives in the home."

Section 4. G.S. 7A-576 reads as rewritten:

"§ 7A-576. *Place of secure or nonsecure custody.*

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care or
- (2) A facility operated by the Department of Social Services or
- (3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section and under G.S. 7A-629 and G.S. 7A-651, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative. Prior to placement of a juvenile with a relative outside of this State, the placement must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Human Resources."

Section 5. G.S. 7A-577(h) reads as rewritten:

"(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile ~~home promptly, promptly to a safe home.~~ A finding that reasonable efforts have not been made ~~to prevent or eliminate the need for placement~~ shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease."

Section 6. G.S. 7A-577 is amended by adding the following new subsection to read:

"(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

- (1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;
- (2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative. Prior to placement of a juvenile with a relative outside of this State, the placement must be in accordance with the Interstate Compact on the Placement of Children; and
- (3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 7. G.S. 7A-585 reads as rewritten:

"§ 7A-585. *Appointment of guardian.*

In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for ~~him~~ the juvenile and may represent the juvenile in legal

actions before any court. The guardian ~~shall also have authority to may~~ consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) ~~undergoing major surgery.~~ enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 56, 56 of this Chapter, or until the juvenile reaches the age of majority."

Section 8. G.S. 7A-651(c) reads as rewritten:

"(c) Any order directing placement of a juvenile in foster care shall also contain:

- (1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and
- (2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made to ~~prevent or eliminate the need for placement~~ shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.

The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease."

Section 9. G.S. 7A-657 reads as rewritten:

"§ 7A-657. *Review of custody order.*

(a) ~~In any case where the judge removes custody from a parent or person standing in loco parentis because of dependency, neglect or abuse, the juvenile shall not be returned to the parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ In any case where custody is removed from a parent, the judge shall conduct a review within six months of the date the order was entered, shall conduct a second review within six months after the first review, and shall conduct subsequent reviews at least every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was entered. The Director shall make timely requests for calendaring ~~of the yearly reviews thereafter.~~ subsequent reviews. The clerk shall give 15 days' notice of the review to the parent or the person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, foster parent, custodian or

agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every 12 months, if the court finds by clear, cogent and convincing evidence that:

- (1) The juvenile has ~~been placed~~ resided with a relative or has been in the custody of another suitable person for a ~~continuous~~ period of at least one year; and
- (2) The placement is stable and continuation of the placement is in the juvenile's best interest; and
- (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every 12 months; and
- (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
- (5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person. ~~at the review at which these findings are made.~~

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following ~~criteria:~~ criteria and make written findings regarding those that are relevant:

- (1) Services which have been offered to reunite the family; family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;
- (2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;
- (3) Goals of the foster care placement and the appropriateness of the foster care plan;
- (4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;
- (5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
- (6) When and if termination of parental rights should be considered;
- (7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, ~~shall have authority to may~~ appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative

found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.

(e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any order entered under this section which continues the foster care placement of a juvenile."

Section 10. Article 3 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-74. County department failure to provide services; State intervention in or control of service delivery.

(a) Notwithstanding any other provision of law to the contrary, the Secretary of Human Resources may take action in accordance with this section to ensure the delivery of child welfare services in accordance with State laws and applicable rules. As used in this section, the terms:

- (1) 'County department of social services' also means the consolidated human services agency, whichever applies;
- (2) 'County director of social services' also means the human services director, whichever applies; and
- (3) 'County board of social services' also means the consolidated human services board, whichever applies.

(b) If the Secretary of Human Resources determines that a county department of social services is not providing child protective services, foster care services, or adoption services in accordance with State law and with applicable rules adopted by the Social Services Commission, or fails to demonstrate reasonable efforts to do so, then the Secretary, after providing written notification of intent to the county director of social services, to the chair of the county board of commissioners, and to the chair of the county board of social services, and after providing them with an opportunity to be heard, may intervene in the particular service or services in question. Intervention includes, but is not limited to, the following activities:

- (1) Sending staff of the Department of Human Resources to the county department of social services to provide technical assistance and to monitor the services being provided;
- (2) Establishing a corrective plan of action to correct inappropriate policies and procedures; and
- (3) Advising county personnel as to appropriate policies and procedures.

If within 60 days of completion of the intervention activities, the Secretary finds that the county department of social services is not providing in accordance with State laws and applicable rules the particular service or services for which intervention was initiated, or has not demonstrated reasonable efforts to do so, the Secretary shall withhold State and federal child welfare services administrative funds until the particular service or services are provided in accordance with State laws and applicable rules.

(c) If the Secretary determines that a county department of social services is not providing child protective, foster care, or adoption services in accordance with State law and with applicable rules adopted by the Social Services Commission, or fails to demonstrate reasonable efforts to do so, and the failure to provide the services poses a substantial threat to the safety and welfare of children in the county who receive or are eligible to receive the services, then the Secretary, after providing written notification of intent to the chair of the county board of commissioners, to the chair of the county board of social services, and to the county director of social services, and after providing them with an opportunity to be heard, shall withhold funding for the particular service or services in question and shall ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of Human Resources.

(d) In the event that the Secretary assumes control of service delivery pursuant to subsection (c) of this section, the county director of social services shall be divested of all service delivery powers conferred upon the director by G.S. 108A-14 and other applicable State law as the powers pertain to the services in question. Upon assumption of control of service delivery, the Secretary may assign any of the powers and duties of the county director of social services to the Director of the Division of Social Services of the Department of Human Resources or to a contractor as the Secretary deems necessary and appropriate to continue the provision of the services in the county.

(e) In the event the Secretary takes action under this section, the Department of Human Resources shall, in conjunction with the county board of commissioners, the county board of social services, and the county director of social services develop and implement a corrective plan of action. The Department of Human Resources shall also keep the chair of the county board of commissioners, the chair of the county board of social services, and the county director of social services informed of any ongoing concerns or problems with the delivery of the services in question.

(f) Upon the Secretary taking action pursuant to subsection (c) of this section, county funding of the services in question shall continue and at no time during the period of time that the Secretary is taking action shall a county withdraw funds previously obligated or appropriated for the services.

Upon the Secretary's assumption of the control of service delivery, the county shall also pay the nonfederal share of any additional cost that may be incurred to operate the services in question at the level necessary to comply fully with State law and Social Services Commission rules.

(g) During the period of time that the Secretary is taking action pursuant to subsection (c) of this section, the Department of Human Resources shall work with the county board of commissioners, the county board of social services, and the county director of social services, to enable service delivery to be returned to the county if and when the Secretary has determined that services can be provided by the county in accordance with State law and applicable rules."

Section 11. Chapter 120 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 24.

"The Legislative Study Commission on Children and Youth.

"§ 120-208. Commission created; purpose.

There is created the Legislative Study Commission on Children and Youth. The purpose of the Commission is to study and evaluate the system of delivery of services to children and youth and to make recommendations to improve service delivery to meet present and future needs of the children and youth of this State. This study shall be a continuing one and the evaluation ongoing.

"§ 120-209. Commission duties.

The Commission shall have the following duties:

- (1) Study the needs of children and youth. This study shall include, but is not limited to:
 - a. Determining the adequacy and appropriateness of services:
 1. To children and youth receiving child welfare services;
 2. To children and youth in the juvenile court system; and
 3. Provided by the Division of Social Services and the Division of Youth Services of the Department of Human Resources.
 - b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.
 - c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.
 - d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.
 - e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

- (2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.
- (3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.
- (4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose.

"§ 120-210. Commission membership; terms; compensation.

(a) The Commission shall consist of 23 members, as follows:

- (1) Ten members appointed by the Speaker of the House of Representatives, as follows:
 - a. Four shall be members of the House of Representatives at the time of their appointment,
 - b. One shall be the director of a local health department,
 - c. One shall be the director of a county department of social services,
 - d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
 - e. One shall be a licensed physician who is knowledgeable about the health needs of children and youth, and
 - f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
 - g. One shall be a representative from the Covenant with North Carolina Children.
- (2) Ten members appointed by the President Pro Tempore of the Senate, as follows:
 - a. Four shall be members of the Senate at the time of their appointment,
 - b. One shall be the director of a mental health area authority,
 - c. One shall be a representative of the Association of County Commissioners,
 - d. One shall be a representative of the general public who has knowledge of issues relating to children and youth,
 - e. One shall be a licensed attorney whose practice includes the representation of parents accused of criminal or civil abuse or neglect, and
 - f. One shall be a chief district court judge recommended by the Council of Chief District Judges.
 - g. One shall be a representative from the North Carolina Child Advocacy Institute.
- (3) The following shall serve ex officio as nonvoting members of the Commission:
 - a. The Secretary of Human Resources, or the Secretary's designee,
 - b. The State Superintendent of Public Instruction, or the Superintendent's designee, and

c. The Secretary of Administration, or the Secretary's designee.

(b) Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualification. Members' terms shall last for two years. Members may be reappointed for two consecutive terms and may be appointed again after having been off the Commission for two years.

(c) Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

"§ 120-211. Commission meetings; public hearings; staff.

(a) The Commission shall hold its initial meeting at the call of the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Subsequent meetings shall be held upon the call of the Commission cochair. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall appoint a cochair each from the membership of the Commission.

(b) The Commission may hold public hearings across the State to solicit public input with respect to issues relating to children and youth.

(c) The Commission may contract for clerical or professional staff or for any other services it may require in the course of its ongoing study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate. The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building.

"§ 120-212. Commission reports.

The Commission shall report to the General Assembly and to the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening.

"§ 120-213. Commission authority.

The Commission has the authority to obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, pursuant to G.S. 120-19, as if it were a committee of the General Assembly."

Section 11.1. G.S. 131D-10.6A reads as rewritten:

"§ 131D-10.6A. Training by the Division of Social Services required.

The Division of Social Services, Department of Human Resources, shall continue the in-house training component that provides a mandated minimum of 30 hours of preservice training for foster care parents either prior to licensure or within six months from the date a provisional license is issued pursuant to G.S. 131D-10.3, and 84 hours for foster care workers and adoption ~~care~~ social workers and a mandated minimum of 10 hours of continuing education for all foster care parents and 18 hours for foster care workers and adoption ~~care~~ social workers."

Section 12. Sections 1 through 9 of this act become effective October 1, 1997, and apply to actions commenced on and after that date. Section 10

of this act becomes effective January 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

Became law upon approval of the Governor at 1:10 p.m. on the 13th day of August, 1997.

S.B. 312

CHAPTER 391

AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 22.

"Check-Cashing Businesses.

"§ 53-275. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) 'Cashing' means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.
- (2) 'Check-cashing service' means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.
- (3) 'Commission' means the State Banking Commission.
- (4) 'Commissioner' means the Commissioner of Banks.
- (5) 'Licensee' means a person or entity licensed to engage in a check-cashing business under this Article.
- (6) 'Person' means an individual, partnership, association, or corporation.

"§ 53-276. License required.

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments.

"§ 53-277. Exemptions.

(a) This Article shall not apply to:

- (1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and
- (2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars (\$2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.

"§ 53-278. Application for license; investigation; application fee.

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

- (1) The name and address of the applicant.
- (2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.
- (3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.
- (4) The addresses of the locations of the business to be licensed.
- (5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars (\$250.00) plus a fifty dollar (\$50.00) fee for each branch location certificate issued under a license.

"§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.

(a) Every licensee and applicant shall have and maintain liquid assets of at least fifty thousand dollars (\$50,000) per licensee.

(b) Upon the filing and investigation of an application, and compliance by the applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver to the applicant the license applied for to engage in business under this Article at the locations specified in the application, provided that the Commissioner finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the Commissioner fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons therefor. The applicant shall be entitled to an informal hearing on the denial provided the applicant requests the hearing in writing within 30 days after the Commissioner has mailed the notice required under this subsection to the applicant. In the event of a hearing, which shall be held in the offices of the Commissioner of Banks in

Raleigh, the Commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application.

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

- (1) Three percent (3%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.
- (2) Ten percent (10%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for personal checks.
- (3) Five percent (5%) of the face amount of the check or five dollars (\$5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. Except as provided by G.S. 53-281(a), any licensee who cashes a check for a fee shall deposit the check not later than three business days from the date the check is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

"§ 53-281. Postdated or delayed deposit checks.

(a) A licensee may defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.

(b) The face amount of any postdated or delayed deposit check cashed pursuant to this section shall not exceed three hundred dollars (\$300.00).

(c) Each postdated or delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or delayed deposit check in excess of fifteen per cent (15%) of the face amount of the check.

(e) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check

from deposit for any period beyond the time set forth in the written agreement with the customer.

"§ 53-282. Record keeping; receipt requirements.

(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

"§ 53-283. Prohibited practices.

No person required to be licensed under this Article shall do any of the following:

- (1) Charge fees in excess of those authorized under this Article.
- (2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.
- (3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.
- (4) Conduct business at premises or locations other than locations licensed by the Commissioner.
- (5) Engage in unfair, deceptive, or fraudulent practices.
- (6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

"§ 53-284. Suspension and revocation of license; grounds; procedure.

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

- (1) Violated this Article or applicable State or federal law or rules.
- (2) Made a false statement on the application for a license under this Article.
- (3) Refused to permit investigation by the Commissioner authorized under this Article.
- (4) Failed to comply with an order of the Commissioner.
- (5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(b) The Commissioner may not suspend or revoke any license issued under this Article unless the licensee has been given notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes.

"§ 53-285. Cease and desist orders.

If the Commissioner determines that a person required to be licensed under this Article has violated this Article or rules adopted pursuant to it, then the Commissioner may, upon notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes, order the person to cease and desist from the violations and to comply with this Article. The Commissioner may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized under this Article.

"§ 53-286. Civil penalties and restitution.

The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars (\$1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

"§ 53-287. Criminal penalties.

A violation of G.S. 53-276 by a person required to obtain a license under this Article is a Class I felony. Each transaction involving the unlawful cashing of a check, draft, or money order constitutes a separate offense.

"§ 53-288. Commissioner to adopt rules.

The Commissioner may adopt rules necessary to carry out the purposes of this Article, to provide for the protection of the public, and to assist licensees in interpreting and complying with this Article.

"§ 53-289. Commission may review rules, orders, or acts by Commissioner.

The Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article, and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done."

Section 2. The Commissioner of Banks shall report to the 2001 General Assembly on the practices of licensees with regard to checks cashed pursuant to the provisions of G.S. 53-281, including any evidence as to consumer complaints, unfair or deceptive trade practices, and the frequency of repeat use by individuals of postdated or delayed deposit checks. It is the intent of the General Assembly that the sunset contained in Section 3 of this act be repealed if there is no evidence of excessive complaints or unfair and deceptive trade practices.

Section 3. This act becomes effective October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 8:35 a.m. on the 14th day of August, 1997.

H.B. 225

CHAPTER 392

AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, there are dry-cleaning operations in the State at which dry-cleaning solvent contamination has or may have occurred; and

Whereas, many instances of dry-cleaning solvent contamination have resulted from solvent handling practices that were lawful and common at the time such practices were undertaken; and

Whereas, the financial resources of individual dry-cleaning operators are frequently insufficient to assess and remediate dry-cleaning solvent contamination to current environmental standards; and

Whereas, the dry-cleaning industry, through the North Carolina Association of Launderers and Cleaners, has expressed a willingness and desire to work cooperatively and to share financial resources to address dry-cleaning solvent contamination resulting from dry-cleaning facilities; and

Whereas, the level of remediation required for dry-cleaning solvent contamination can be determined using the same risk-assessment techniques that are currently being applied to releases of other regulated substances; and

Whereas, assessment and remediation of dry-cleaning solvent contamination sites in this State can be accelerated through the use of an industry-supported funding mechanism; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 6. Dry-Cleaning Solvent Cleanup.

"§ 143-215.104A. Title.

This Part is the 'Dry-Cleaning Solvent Cleanup Act of 1997' and may be cited by that name.

"§ 143-215.104B. Definitions.

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77, 130A-2, and 130A-290 apply throughout this Part.

(b) Unless a different meaning is required by the context, the following definitions apply in this Part. The definitions set out in this subsection apply only to the implementation of this Part and do not define or limit the scope of any other remedial program:

- (1) 'Abandoned dry-cleaning facility site' or 'abandoned site' means any real property or individual leasehold space on which a dry-cleaning facility or wholesale distribution facility formerly operated.

- (2) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (3) 'Commission' means the Environmental Management Commission.
- (4) 'Contaminant' means a regulated substance released into the environment.
- (5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission, the Commission for Health Services, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.
- (6) 'Disposal' shall have the meaning ascribed to it in G.S. 130A-290.
- (7) 'Dry-cleaning facility' means a place of business located in this State and engaged in on-site dry-cleaning operations, other than a commercial uniform service or commercial linen supply facility.
- (8) 'Dry-cleaning operations' means cleaning of apparel and household fabrics by using one or more dry-cleaning solvents instead of water.
- (9) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1 trichloroethane, a petroleum-based solvent, another comparable product used as a cleaning agent in a dry-cleaning operation or the degradation products from these hazardous substances.
- (10) 'Dry-cleaning solvent assessment agreement' or 'assessment agreement' means an agreement between the Commission and a potentially responsible party who desires to assess whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants that are identified in the agreement may require remediation under other remedial programs operated or administered by the Department.
- (11) 'Dry-cleaning solvent remediation agreement' or 'remediation agreement' means an agreement between the Commission and a potentially responsible party who desires to clean up dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other contaminants that are identified in the agreement under other remedial programs operated or administered by the Department.
- (12) 'Dry-cleaning solvent contamination' means the presence of dry-cleaning solvent in the waters or surface or subsurface soils of the State, the bedrock or other rock formations, or buildings in a concentration above the level requiring remediation pursuant to the rules implementing Article 21A of Chapter 143.

- (13) 'Facility' means a dry-cleaning facility or a wholesale distribution facility.
- (14) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.
- (15) 'Hazardous waste' shall have the meaning ascribed to it in G.S. 130A-290.
- (16) 'Imminent hazard' means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.
- (17) 'Local government' means a town, city, or county.
- (18) 'Operator' means any person operating a dry-cleaning facility or wholesale distribution facility, whether by lease, contract, or any other form of agreement.
- (19) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (20) 'Pollution and remediation legal liability insurance' means property and casualty insurance coverage on a claims-made basis for response costs authorized to be reimbursed from the Fund in G.S. 143-215.104N(a).
- (21) 'Potentially responsible party' means any person who may have liability for assessment, monitoring, treatment, mitigation, or remediation of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility.
- (22) 'Public health' means public health as the term is used in Article 9 of Chapter 130A of the General Statutes and 'human health' as the term is used in Articles 21 and 21A of Chapter 143 of the General Statutes.
- (23) 'Regulated substance' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes.
- (24) 'Release' means any spillage, leakage, pumping, placement, emptying, or dumping of dry-cleaning solvents resulting from a dry-cleaning operation or the operation of a wholesale distribution facility.
- (25) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the programs implemented under Article 9 of Chapter 130A of the General Statutes and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes but not the remedial program implemented under Part 2A of Article 21A of Chapter 143 of the General Statutes.
- (26) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading,

migration, leaking, leaching, volatilization, spilling, transporting, or further release of a contaminant into the environment in order to protect public health or the environment.

- (27) 'Response costs' means costs incurred in connection with a certified facility or abandoned site that the Commission determines are reasonably necessary and consistent with the applicable requirements of the Commission and any applicable dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement.
- (28) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).
- (29) 'Treatment' shall have the meaning ascribed to it in G.S. 130A-290.
- (30) 'Waters' means any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, that is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.
- (31) 'Wholesale distributor' means a person who operates a wholesale distribution facility.
- (32) 'Wholesale distribution facility' means a place of business located in this State and engaged in the storage, distribution, or sale of dry-cleaning solvents for use in dry-cleaning facilities.

"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.

(a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund must be credited to it. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. -- The following revenue is credited to the Fund:

- (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.
- (2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.
- (3) Gifts and grants made to the Fund.

(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified until the

revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

"§ 143-215.104D. Powers of the Commission.

(a) Administrative Functions. -- The Commission may delegate any or all of the powers enumerated in this subsection to the Department or engage a private contractor or contractors to carry out the activities enumerated in this subsection. If the Commission engages a private contractor to carry out the functions enumerated in subdivisions (1) through (6) of this subsection, no action of the contractor shall be effective until ratified by the Commission. The Commission shall:

- (1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.
- (2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.
- (3) Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.
- (4) Schedule funding of assessment and remediation activities.
- (5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.
- (6) Determine that all necessary assessment and remediation has been completed at a contamination site.
- (7) Make payments from the Fund to reimburse the costs of assessment and remediation. Any payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement.

(b) Rule making. -- The Commission shall adopt rules as are necessary to implement the provisions of this Part. Rules adopted by the Commission shall be consistent with and shall not duplicate, but may incorporate by reference, the rules adopted by the Commission for Health Services pursuant to Article 9 of Chapter 130A of the General Statutes. The Commission shall not delegate the rule-making powers provided in this subsection.

- (1) The Commission may adopt rules governing:
 - a. Fees for response costs reimbursable under this Part.
 - b. The certification and decertification of facilities or abandoned sites.
 - c. The prioritization of facilities or abandoned sites and scheduling of funding for assessment and remediation activities. These rules shall provide for:
 1. Consideration of the degree of harm or risk to public health and the environment.

- 1038

- a. Criteria and methods for determining remediation requirements, including the level of remediation necessary to assure adequate protection of public health and the environment.
- b. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.
- c. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.
- d. Strategies for the assessment and remediation of dry-cleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described under sub-subdivision a. of this subdivision.

(c) All rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically feasible while protecting public health and the environment from the release of dry-cleaning solvents.

(d) Unless otherwise provided in this Part, the Commission may delegate any of its rights, duties, and responsibilities under this Part to the Department.

"§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.

(a) The owner or operator of any dry-cleaning facility or any wholesale distribution facility operating in the State shall establish and continuously maintain financial responsibility for legal liability arising in connection with dry-cleaning solvent contamination resulting from a release at the facility by either:

- (1) Obtaining pollution and remediation legal liability insurance for the facility with coverage limits not less than one million dollars (\$1,000,000) from an insurance carrier authorized to do business in this State, or
- (2) Depositing with the Commission, securities or a third-party bond acceptable to the Commission in an amount not less than one million dollars (\$1,000,000).

(b) If the owner or operator of a dry-cleaning facility or any wholesale distribution facility demonstrates to the satisfaction of the Commission an inability to establish financial responsibility consistent with the standards of subsection (a) of this section, then the Commission shall issue a determination of uninsurability to the operator of the facility. When a facility is designated as uninsurable by the Commission, the financial responsibility requirements of subsection (a) of this section are satisfied.

(c) Unless the Commissioner of Insurance adopts rules providing otherwise, a dry-cleaning facility or wholesale distribution facility shall be determined to be uninsurable if the annual premium for coverage of the dry-cleaning facility or wholesale distribution facility meeting the

requirements of this Part is more than three times the average premium for similar coverage for dry-cleaning facilities or wholesale distribution facilities where dry-cleaning solvent contamination is not known to have occurred. Each insurer selling pollution and remediation legal liability insurance in this State shall, on or before 1 March of each year, report to the Commission the number of policies held in force by the company in this State for dry-cleaning facilities and for wholesale distribution facilities and the average premium rate for each type of facility during the preceding calendar year.

(d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a United States military base or owned by the United States or a department or agency of the United States and dry-cleaning facilities and abandoned dry-cleaning facility sites owned by the State or an agency or department of the State are exempt from complying with this section.

"§ 143-215.104F. Requirements for certification, assessment agreements, and remediation agreements.

(a) Any person petitioning for certification of a facility or abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(b) Requirements for Potentially Responsible Persons Generally. -- Every petitioner shall provide the Commission with:

- (1) Information necessary for the Commission to determine the priority ranking of the facility or abandoned site described in the petition.
- (2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.
- (3) Evidence of financial responsibility established in accordance with G.S. 143-104.215E(a) or a copy of a determination of uninsurability issued by the Commission pursuant to G.S. 143-25.104E(b).

(c) Requirement for Property Owners. -- In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission or its agent to have access to the property for purposes of determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(d) The Commission shall reject any petition made pursuant to this Part in any of the following circumstances:

- (1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

- (2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.
- (3) The petitioner is an owner or operator of the facility described in the petition and the petitioner had failed, at the time the contamination was discovered, to establish financial responsibility for the facility pursuant to G.S. 143-215.104E(a) or to obtain a determination of uninsurability pursuant to G.S. 143-215.104E(b).
- (e) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:
- (1) The petitioner fails to provide the information required by subsection (b) of this section.
- (2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.
- (f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. The requirements in this subsection shall be in addition to any insurance or other financial responsibility, including deductibles or retentions, established pursuant to G.S. 143-215.104E.

Facility or Abandoned Site Where Release OccurredCosts

Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year

\$5,000

Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year

\$10,000

Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in

<u>activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$15,000</u>
<u>Wholesale distribution facilities</u>	<u>\$25,000</u>
<u>Abandoned dry-cleaning facility sites</u>	<u>\$50,000.</u>

(g) If a dry-cleaning facility is determined to be uninsurable, the financial responsibility requirements for the dry-cleaning facility shall be three times the amount provided above. The financial responsibility requirement for a wholesale distribution facility that is determined to be uninsurable shall be fifty thousand dollars (\$50,000).

"§ 143-215.104G. Certification of facilities and abandoned sites.

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent is believed to have occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

(b) The Commission may change the initial priority rankings of any facility or abandoned site as additional facilities or abandoned sites are certified if the Commission, in its sole discretion, determines that additional facilities or sites pose a higher degree of harm or risk to public health and the environment. However, the Commission shall not change the priority ranking of a facility or an abandoned site that is set in a dry-cleaning solvent remediation agreement.

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

- (1) A proposed dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement or an indication of the petitioner's intent to enter into an assessment agreement or remediation agreement.
- (2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with

assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

"§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.

(a) Assessment Agreements. -- One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. Petitioners shall provide the Commission with any information necessary to demonstrate that the:

- (1) Priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the adjusted priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.
- (2) Projected schedule for funding of assessment activities, including reimbursements from the Fund is adequate.
- (3) Assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site are adequate.
- (4) Person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.
- (5) Petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.
- (6) Permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.
- (7) Assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.
- (8) Costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.
- (9) Petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

- (1) Specify the date on which remediation will begin.
- (2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

- (1) The petitioner will not accept financial responsibility for the share of the response costs required by G.S. 143-215.104F.
- (2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.
- (3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement.

"§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the

applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate that:

- (1) The petitioner, and any parent, subsidiary, or other affiliate of the petitioner has substantially complied with:
 - a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.
 - b. The requirements applicable to any remediation in which the petitioner has previously engaged.
 - c. Federal and State laws, regulations, and rules for the protection of the environment.
- (2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.
- (3) There is a public benefit commensurate with the liability protection provided under this Part.
- (4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.
- (5) The petitioner has complied with or will comply with all applicable procedural requirements.
- (6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.
- (7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the adjusted priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.
- (8) The projected schedule for funding of remediation activities, including reimbursements from the Fund.
- (9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

- (10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.
- (11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

- (1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:
 - a. A description of specific areas where remediation is to be conducted.
 - b. The remediation method or methods to be employed.
 - c. The resources that the petitioner will make available and the degree to which the petitioner intends to rely on the Fund for resources.
 - d. A schedule of remediation activities.
 - e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).
 - f. A schedule and the method or methods for evaluating the remediation.
- (2) Any land-use restrictions that will apply to the contamination site or other property.
- (3) The desired results of any remediation or land-use restrictions with respect to the contamination site.
- (4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.
- (5) The consequences of achieving or not achieving the desired results.
- (6) The final priority ranking of the facility or abandoned site.
- (7) The person who will conduct the remediation if that person is not the potentially responsible party entering the remediation agreement.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if:

- (1) The petitioner will not accept financial responsibility for the share of the response costs established in G.S. 143-215.104F. This requirement shall not apply to a petitioner who (i) is the owner of

property upon which the dry-cleaning solvent contamination is located, and (ii) is not a current or former owner or operator of a facility believed to be responsible for the contamination.

- (2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking remediation activities required by the Commission.
- (3) The petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the bases set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with the owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. A remediation agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the remediation agreement and this Part.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner.

"§ 143-215.104J. Decertification; termination of assessment agreements and remediation agreements.

(a) The Commission may decertify a facility or abandoned site or renegotiate or terminate an assessment agreement or remediation agreement with respect to any party thereto in the following circumstances:

- (1) The owner or operator of the facility, at any time subsequent to the certification of the facility, violates any of the minimum management requirements adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).
- (2) In the case of dry-cleaning contamination on property that is owned by a petitioner, the petitioner fails to file a Notice of Dry-Cleaning Solvent Remediation, if required, as provided in G.S. 143-215.104M.
- (3) The potentially responsible persons who are parties to a dry-cleaning solvent assessment agreement are unable to reach an agreement with the Commission to enter into a dry-cleaning

solvent remediation agreement within the time specified in the assessment agreement.

- (4) The payment of taxes assessed to the facility under Article 5D of Chapter 105 of the General Statutes is delinquent.
- (5) The financial responsibility to meet the requirement of G.S. 143-215.104E is not maintained continuously for any facility, unless a determination of uninsurability has been issued for the facility.
- (6) The owner or operator fails to comply with all applicable requirements of this Part to complete any assessment or remediation activities required by an assessment agreement or remediation agreement.
- (7) The owner or operator of a facility for which an assessment or remediation activity is scheduled or in progress transfers the ownership or operation of the facility or abandoned site to another person without the prior consent of the Commission and the execution of a substitute assessment agreement or remediation agreement.
- (8) The standards applied to the dry-cleaning solvent contamination remediation or containment under the provisions of this Part and the dry-cleaning solvent remediation agreement will, or are likely to, cause the Department to fail to comply with the terms and conditions under which it operates and administers a remediation program by delegation or similar authorization from the United States or one of its departments or agencies, including the Environmental Protection Agency.

(b) Prior to decertifying any facility or abandoned site or renegotiating or terminating any assessment agreement or remediation agreement, the Commission shall give the petitioners notice and opportunity for hearing. The Commission is not required to give the petitioners notice and opportunity for hearing when the Commission reasonably takes an emergency action to abate an imminent hazard caused by or arising from assessment or remediation activities at a contamination site whether the Commission issues a special order pursuant to G.S. 143-215.2 or takes other action.

(c) Decertification of any facility or abandoned site or renegotiation or termination of any assessment agreement or remediation agreement pursuant to this section shall not affect the rights of any petitioner, other than a petitioner whose violation of the provisions of subsection (a) of this section was the basis for the decertification, renegotiation, or termination and any parent, subsidiary, or other affiliate of that petitioner. If the Commission decertifies a facility or abandoned site or terminates an assessment agreement or remediation agreement with any party to the agreement pursuant to subsection (a) of this section, the Commission shall use its best efforts to negotiate a substitute agreement with any remaining parties to the agreement.

"§ 143-215.104K. Liability protection.

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is

complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as the activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

- (1) Any person under the direction or control of the petitioner who directs or contracts for assessment, remediation, or redevelopment of the contamination site.
- (2) Any future owner of the contamination site.
- (3) A person who develops or occupies the contamination site.
- (4) A successor or assign of any person to whom the liability protection provided under this Part applies.
- (5) Any lender or fiduciary that provides financing for assessment, remediation, or redevelopment of the contamination site.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to current standards. A petitioner who completes the remediation or redevelopment required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

- (1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.
- (2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of

previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to current standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation agreement sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the remediation agreement.

- (3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination site or (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation agreement.
- (4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.
- (5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.
- (6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.
- (7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization.

"§ 143-215.104L. Public notice and community involvement.

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, the petitioner shall notify the public and the

community in which the facility or abandoned site is located of the planned remediation and redevelopment activities. The petitioner shall submit a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent to the Commission. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a proposed Notice of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed dry-cleaning solvent remediation agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Commission, the petitioner shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The petitioner shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The petitioner shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within 30 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also direct the petitioner to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall direct the petitioner to

publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written dry-cleaning solvent remediation agreement. The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"§ 143-215.104M. Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.

(a) Land-Use Restriction. -- In order to reduce or eliminate the danger to public health or the environment posed by a dry-cleaning solvent contamination site, the owner of property upon which dry-cleaning solvent contamination has been discovered may prepare and submit to the Commission for approval a Notice of Dry-Cleaning Solvent Remediation identifying the site on which the contamination has been discovered and providing for current or future restrictions on the use of the property. If a petitioner requests that a contamination site be remediated to standards that require land-use restrictions, the owner of the property must file a Notice of Dry-Cleaning Solvent Remediation for the remediation agreement to become effective.

(b) Notice of Restriction. -- A Notice of Dry-Cleaning Solvent Remediation shall include:

- (1) A survey plat of the contamination site that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30.
- (2) A legal description of the property that would be sufficient as a description in an instrument of conveyance.
- (3) A description of the location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.
- (4) The type, location, and quantity of dry-cleaning solvent contamination known to exist on the property.
- (5) Any restrictions on the current or future use of the property or other property that are necessary to assure adequate protection of public health and the environment as provided in rules adopted pursuant to G.S. 143-215.104D(b)(3). These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a contamination site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(c) Recordation of Notice. -- After the Commission approves and certifies the Notice of Dry-Cleaning Solvent Remediation under subsection (a) of this section, a certified copy of a Notice of Dry-Cleaning Solvent Remediation shall be filed in the office of the register of deeds of the county or counties in which the property described is located. The owner of the property shall file the Notice of Dry-Cleaning Solvent Remediation within 15 days of the property owner's receipt of the Commission's approval of the notice or the effective date of the dry-cleaning solvent remediation agreement, whichever is later. The register of deeds shall record the certified copy of the Notice of Dry-Cleaning Solvent Remediation and index it in the grantor index under the names of the owners of the land.

(d) Notice of Transfer. -- When property for which a Notice of Dry-Cleaning Solvent Remediation has been filed is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been contaminated with dry-cleaning solvent and, if appropriate, cleaned up under this Part.

(e) Cancellation of Notice. -- A Notice of Dry-Cleaning Solvent Remediation filed pursuant to this Part may, at the request of the owner of the property subject to the Notice of Dry-Cleaning Solvent Remediation, be canceled by the Secretary after the risk to public health and the environment associated with the dry-cleaning solvent contamination and any other contaminants included in the dry-cleaning solvent remediation agreement has been eliminated as a result of remediation of the property. The Secretary shall forward notice of cancellation to the register of deeds of the county or counties where the Notice of Dry-Cleaning Solvent Remediation is recorded and request that the Notice of Dry-Cleaning Solvent Remediation be canceled. The notice of cancellation shall contain the names of the landowners as shown in the Notice of Dry-Cleaning Solvent Remediation. The register of deeds shall record the notice of cancellation in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice of Dry-Cleaning Solvent Remediation and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice of Dry-Cleaning Solvent Remediation showing the date of cancellation and the book and page where the notice of cancellation is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Enforcement. -- Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted

any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of privity of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) Relation to Brownfields Notice. -- Unless the Commission decertifies a previously certified facility or a previously certified abandoned site, this section shall apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties remediated under this Part.

"§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and remediation costs; limitations; collection of reimbursement.

(a) Reimbursement. -- To the extent monies are available in the Fund for reimbursement of response costs, the Commission shall reimburse any person responsible for implementing assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response costs:

- (1) Costs of assessment with respect to dry-cleaning solvent contamination.
- (2) Costs of treatment or replacement of potable water supplies affected by the contamination.
- (3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.
- (4) Monitoring of the contamination.
- (5) Inspection and supervision of activities described in this subsection.
- (6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.
- (7) Other activities reasonably required to protect public health and the environment.

(b) Limitations. -- Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

- (1) For costs incurred in connection with facilities or abandoned sites not certified pursuant to G.S. 143-215.104G.
- (2) For costs not incurred pursuant to a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement.
- (3) For costs before funds available through the financial responsibility demonstrated by the owner or operator of the facility or abandoned site pursuant to G.S. 143-215.104E and funds obligated by petitioners pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation

agreement in accordance with G.S. 143-215.104F(f) are exhausted.

- (4) For costs at a contamination site that has been identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition), except that the Commission may authorize distribution of the required State match in an amount not to exceed two hundred thousand dollars (\$200,000) per year per site. The Commission shall not delegate its authority to disburse funds pursuant to this subdivision.
- (5) For remediation beyond the level required under the Commission's risk-based criteria for determining the appropriate level of remediation.
- (6) For assessment or remediation response costs incurred in connection with any individual dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in excess of two hundred thousand dollars (\$200,000) per year. However, that the Commission may disburse up to four hundred thousand dollars (\$400,000) per year for assessment and remediation costs incurred in connection with a certified facility or a certified abandoned site that poses an imminent hazard.
- (7) That would result in a diminution of the Fund balance below one hundred thousand dollars (\$100,000), unless an emergency exists in connection with a dry-cleaning solvent contamination abandoned site that constitutes an imminent hazard.
- (8) For any costs incurred in connection with dry-cleaning solvent contamination from a facility located on a United States military base or owned by the United States or a department or agency of the United States.
- (9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.

(c) Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have exhausted the financial resources made available under the agreement pursuant to G.S. 143-215.104E and G.S. 143-215.104F.

(d) Each dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreements made by the Commission pursuant to this Part shall expressly state that the Commission's obligation to reimburse response costs incurred pursuant to these agreements shall be contingent upon the availability of monies from the Fund and that the State and its departments and agencies have no obligation to reimburse otherwise eligible expenses if monies are not available in the Fund to pay the reimbursements. If, at any time, the Commission determines that the cost of assessment and remediation activities reimbursable pursuant to existing dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements equals or exceeds the total revenues expected to be credited to the Fund over the life of the Fund, the Commission shall publish notice of the

determination in the North Carolina Register. Following the publication of a notice pursuant to this section, the Commission may continue to enter into dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements until the day of adjournment of the first regular session of the General Assembly that begins after the date the notice is published, but shall have no authority to enter into additional dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements after that date unless the Commission first determines either (i) that revenues will be available from the Fund to reimburse the costs of assessment and remediation activities expected to be reimbursable pursuant to the agreements, or (ii) that assessment and remediation activities undertaken pursuant to the agreements will be paid entirely from sources other than the Fund. For the purposes of this subsection, the term 'day of adjournment' shall mean: (i) in the case of a regular session held in an odd-numbered year, the day the General Assembly adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular session held in an even-numbered year, the day the General Assembly adjourns sine die.

(e) The Commission shall pay the reimbursable response costs of eligible parties as they are incurred. If the cleanup of the contamination site is not completed as required by the remediation agreement, any response costs previously reimbursed for the cleanup shall be repaid to the Fund, with interest. The Commission shall request the Attorney General to commence a civil action to secure repayment of response costs and interest of the costs.

"§ 143-215.1040. Remediation of uncertified sites.

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this subsection.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made.

"§ 143-215.104P. Enforcement procedures; civil penalties.

(a) The Secretary may assess a civil penalty of not more than ten thousand dollars (\$10,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290, of not more than twenty-five thousand dollars (\$25,000) against any person who:

- (1) Fails to establish financial responsibility for a dry-cleaning facility or a wholesale distribution facility as required by this Part.
- (2) Engages in dry-cleaning operations using dry-cleaning solvent for which the appropriate sales or use tax has not been paid.
- (3) Fails to comply with rules adopted by the Commission pursuant to this Part.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.
- (5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- (6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
- (7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
- (8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or rule implementing this Part.
- (9) Knowingly makes a false statement of material fact in a rule-making proceeding or contested case under this Part.
- (10) Refuses access to the Commission or its duly designated representative to any premises for purposes of conducting a lawful inspection provided for in this Part or rule implementing this Part.

(b) If any action or failure to act for which a penalty may be assessed under subsection (a) of this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars (\$10,000) per day or, if the violation involves a hazardous waste, as defined in G.S. 130-290, not exceed twenty-five thousand dollars (\$25,000) per day. A penalty for a continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located in order to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located to recover the amount of the assessment. A civil action must be filed within three years of the date the final agency decision or court order was served on the violator.

"§ 143-215.104Q. Enforcement procedures; criminal penalties.

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class 2 misdemeanor, which may include a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that the fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which the violation continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean 'intentionally and consciously' as the courts of this State, according to the principles of common law, interpret the phrase in the light of reason and experience.

(c) (1) Any person who knowingly commits any of the offenses set out in subdivisions (3) through (10) of G.S. 143-215.104P(a) and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of

violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which the violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

- a. His conduct, if he is aware of the nature of his conduct.
- b. An existing circumstance, if he is aware or believes that the circumstance exists.
- c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, the following should be considered in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

- a. The person is responsible only for actual awareness or actual belief that he possessed, and
- b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business or profession, or of medical treatment or medical or scientific experimentation conducted by professionally approved methods, and the person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

- (1) A natural disaster or other act of God that could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to

the employee as soon as practicable after receiving and relying on the advice.

- (4) An act causing no significant harm to the environment or risk to public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations causing no significant harm to the environment or risk to public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.
- (6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(h) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(i) For purposes of this section, the term 'person' means, in addition to the definition contained in G.S. 143-212, any responsible corporate or public office or employee. If a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying out the intent and purpose, then this section shall not apply to elected officials or to any responsible appointed officials or employees of the county, city, town, or other political subdivision.

"§ 143-215.104R. Enforcement procedures; injunctive relief.

Whenever the Commission has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part or rule implementing this Part, the Commission may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Commission for injunctive relief to restrain

the violation or threatened violation and for other and further relief in the premises as the court shall deem proper. The Attorney General may institute an action in the superior court of the county in which the violation occurred or may occur or, in the Attorney General's discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has a principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the rules of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to the proceedings from any penalty prescribed for violation of this Part. In the event a civil action is commenced pursuant to this section, the Commission may recover the costs of the action, including attorneys' fees and investigation expenses. All monies received or recovered shall be paid into the Fund or other source from which the expenditures were made.

"§ 143-215.104S. Appeals.

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104E through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. The Commission shall make the final agency decision in contested cases initiated pursuant to this section. The Commission shall not delegate its authority to make a final agency decision pursuant to this section.

"§ 143-215.104T. Construction of this Part.

(a) This Part is not intended to and shall not be construed to:

- (1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. The use of the identified contamination site and any land-use restrictions in the dry-cleaning solvent remediation agreement shall be consistent with local land-use controls adopted under those statutes.
- (2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a dry-cleaning solvent remediation agreement.
- (3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.
- (4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person at a facility or abandoned site.
- (5) Affect the right of any person to seek any relief available against any party to the dry-cleaning solvent remediation agreement who may have liability with respect to the facility or abandoned site, except that this Part does limit the relief available against any party

to a remediation agreement with respect to assessment or remediation of the contamination site to the assessment remediation required under the remediation agreement.

- (6) Affect the right of any person who may have liability with respect to the facility or abandoned site to seek contribution from any other person who may have liability with respect to the facility or abandoned site and who neither received nor has liability protection under this Part.
- (7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as condition to receive program authorization, delegation, primacy, or federal funds.
- (8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or from the pollution of the land, air, or waters of this State on a facility or abandoned site.
- (9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering into, monitoring, or enforcing a dry-cleaning solvent assessment agreement, a dry-cleaning solvent remediation agreement, or a Notice of Dry-Cleaning Solvent Remediation under this Part or any other action implementing this Part.

"§ 143-215.104U. Reporting requirements.

(a) The Secretary shall present an annual report to the Environmental Review Commission that shall include at least the following:

- (1) A list of all dry-cleaning solvent contamination reported to the Department.
- (2) A list of all facilities and abandoned sites certified by the Commission and the status of contamination associated with each facility or abandoned site.
- (3) An estimate of the cost of assessment and remediation required in connection with facilities or abandoned sites certified by the Commission and an estimate of assessment and remediation costs expected to be paid from the Fund.
- (4) A statement of receipts and disbursements for the Fund.
- (5) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.
- (6) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(b) The Secretary shall make the annual report required by this section on or before 1 October of each year."

Section 2. (a) G.S. 143B-282(a)(1)t. reads as rewritten:

"t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143, 143 of the General Statutes."

(b) G.S. 143B-282(a)(2) is amended by the addition of a new sub-subdivision to read:

"j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes."

Section 3. G.S. 58-2-40 is amended by adding a new subdivision to read:

"(9) Adopt rules governing what shall constitute an uninsurable facility for the purposes of G.S. 143-215.104E(b). The rules shall base the determination of uninsurability on the availability of pollution and remediation legal liability insurance at an annual premium amount that is affordable and proportionate to premium amounts charged for coverage of facilities at which dry-cleaning solvent contamination is not known to be present. In no event shall the annual premium amount on which a determination of uninsurability is based be greater than three times the average premium that is charged for coverage of facilities at which dry-cleaning solvent contamination is not known to be present."

Section 4. Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5D.

"Dry-Cleaning Solvent Tax.

"§ 105-187.30. Definitions.

The definitions in G.S. 105-164.3 apply to this Article, and the following definitions apply to this Article:

(1) Dry-cleaning facility. -- Defined in G.S. 143-215.104B.

(2) Dry-cleaning solvent. -- Defined in G.S. 143-215.104B.

"§ 105-187.31. Tax imposed.

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is five dollars and eighty-five cents (\$5.85) for each gallon of dry-cleaning solvent that is chlorine-based and eighty cents (80¢) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes.

"§ 105-187.32. Administration.

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this

Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent.

"§ 105-187.33. Exemptions and refunds.

The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.

"§ 105-187.34. Use of tax proceeds.

The Secretary must credit the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning Solvent Cleanup Fund. The Secretary may retain the Department's cost of collection, not to exceed one hundred twenty-five thousand dollars (\$125,000) a year, as reimbursement to the Department."

Section 4.1. G.S. 105-259(b) is amended by adding a new subdivision to read:

- "(20) To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter."

Section 4.2. G.S. 130A-310.31(b)(3) reads as rewritten:

- "(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.)."

Section 4.3. G.S. 130A-310.31(b)(5) reads as rewritten:

- "(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation activities at the site comply of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants at the site that are adopted or published established by statute or adopted, published, or implemented by the Commission, the Environmental Management Commission, the Commission, or the Department. Department instead of the risk-based standards established by the Commission pursuant to this Part."

Section 4.4. G.S. 130A-310.31(b)(11) reads as rewritten:

- "(11) 'Regulated substance' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes."

Section 4.5. G.S. 130A-310.37 is amended by adding a new subsection to read:

"(c) The Department shall not enter into a brownfields agreement for a brownfields site that is identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition)."

Section 5. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 1 January 1999.

Section 6. (a) The General Statutes set out in Sections 1, 4, and 4.1 of this act become effective on the date specified in the following table:

Statute	Effective Date
143-215.104A	When this act becomes law
143-215.104B	When this act becomes law
143-215.104C	When this act becomes law
143-215.104D	When this act becomes law
143-215.104E	1 April 1998
143-215.104F	1 January 1999
143-215.104G	1 January 1999
143-215.104H	1 January 1999
143-215.104I	1 January 1999
143-215.104J	1 January 1999
143-215.104K	1 January 1999
143-215.104L	1 January 1999
143-215.104M	1 January 1999
143-215.104N	1 January 1999
143-215.104O	1 January 1999
143-215.104P	1 January 1998
143-215.104Q	1 January 1998
143-215.104R	1 January 1998
143-215.104S	1 January 1998
143-215.104T	1 January 1998
143-215.104U	1 January 1998
105-187.30	1 October 1997
105-187.31	1 October 1997
105-187.32	1 October 1997
105-187.33	1 October 1997
105-187.34	1 October 1997
105-259(b)(20)	1 January 1999.

(b) Sections 2 and 3 of this act become effective 1 October 1997.

(c) Sections 4.2 through 4.5 of this act become effective if and when 1997 House Bill 1121 becomes law.

(d) Sections 5 through 8 of this act are effective when this act becomes law.

(e) The Secretary of Environment, Health, and Natural Resources shall make the first annual report required under G.S. 143-215.104U on or before 1 October 1998.

(f) The Environmental Management Commission shall adopt rules and develop forms, strategies, and other procedures required or authorized by subdivisions (1) and (3) of G.S. 143-215.104D(b) on or before 1 January 1999.

Section 7. (a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to an enforcement action by the Department of Environment, Health, and Natural Resources during the period beginning 1 October 1997 and 1 January 1999 may, on or after 1 January 1999 seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars (\$50,000). The Commission shall reimburse costs if it finds that the costs incurred were (i) reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) or (5) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a specific order of the Department of Environment, Health, and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

(b) Any person who, as of 1 January 1999, is undertaking assessment or remediation of dry-cleaning solvent contamination shall be eligible to petition the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. In calculating the required financial contribution of parties to any agreement, the Commission shall determine the cost of any unreimbursed assessment or remediation activity undertaken by the parties with respect to the contamination site prior to 1 January 1999 and shall credit the amount toward any applicable financial responsibility limits established in G.S. 143-215.104F.

Section 8. Section 7 of this act is repealed effective 1 January 2000. Any reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in accordance with the provisions of that section. Section 4 of this act is repealed effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012. However:

- (1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.
- (2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.
- (3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S.

143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

Became law upon approval of the Governor at 8:43 a.m. on the 14th day of August, 1997.

H.B. 993

CHAPTER 393

AN ACT TO ALLOW CREATION OF ADDITIONAL REGIONAL TRANSPORTATION AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27.

"Regional Transportation Authority.

"§ 160A-630. Title.

This Article shall be known and may be cited as the 'Regional Transportation Authority Act.'

"§ 160A-631. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) 'Authority' means a Regional Transportation Authority as defined by subdivision (6) of this section.
- (2) 'Board of Trustees' means the governing board of the Authority, in which the general legislative powers of the Authority are vested.
- (3) 'Population' means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.
- (4) 'Public transportation' means transportation of passengers whether or not for hire by any means of conveyance, including, but not limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.
- (5) 'Public transportation system' means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. 'Public transportation system' however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

- (6) 'Regional Transportation Authority,' means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.
- (7) 'Unit of local government' means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.
- (8) 'Unit of local government's chief administrative official' means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-632. Definition of territorial jurisdiction of Authority.

An authority may be created for the area of any Metropolitan Planning Organization of the State that, at the time of creation of the authority, meets the following criteria, such area being the initial territorial jurisdiction of the Authority:

- (1) The area consists of all or part of five counties, all five counties of which form a contiguous territory;
- (2) At least two of those counties are contiguous to each other and each have a population of 250,000 or over; and
- (3) The other three counties each have a population of 100,000 or over.

"§ 160A-633. Creation of Authority.

(a) The city councils of the four largest cities within an area for which an authority may be created as defined in G.S. 160A-632 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No city shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

- (1) The name of the authority;
- (2) A statement that such authority is organized under this Article;
and
- (3) The names of the four organizing cities.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of

State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority, a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided, the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended.

"§ 160A-634. Territorial jurisdiction and service area of the Authority.

(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties.

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the United States Department of Transportation, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission.

"§ 160A-635. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

- (1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.
- (2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.
- (3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction.
- (4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has

expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(b) The members appointed by the Secretary of Transportation shall serve at the pleasure of the Secretary.

(c) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-634.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars (\$50.00) as compensation for attendance at each duly conducted meeting of the Authority.

"§ 160A-636. Voting.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-635(a)(2), each member shall have one vote.

"§ 160A-637. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees.

"§ 160A-638. Purpose of the Authority.

The purpose of the authority is to enhance the quality of life in its territorial jurisdiction by promoting the development of sound transportation systems which provide transportation choices, enhance mobility, accessibility, and safety, encourage economic development and sound growth patterns, and protect the man-made and natural environments of the region.

"§ 160A-639. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

- (1) To sue and be sued;
- (2) To have a seal;
- (3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;
- (4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;
- (5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;
- (6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;
- (7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal,

tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

- (8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties, including, but not necessarily limited to, parking facilities;
- (9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;
- (10) To surrender to the State of North Carolina any property no longer required by the Authority;
- (11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority and to prepare and make recommendations in regard thereto;
- (12) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;
- (13) To develop and carry out demonstration projects;
- (14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;
- (15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares, or transfer of passengers;
- (16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;
- (17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of buses, taxicabs, and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

- (18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities, and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;
- (19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of G.S. 160A-460 through G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority;
- (20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;
- (21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its public transportation system;
- (22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;
- (23) To facilitate the coordination of transportation plans in the service area and the activities of the member Metropolitan Planning Organizations;
- (24) To maintain databases for the projection of future travel demands in the region;
- (25) To provide and operate regional ridesharing and vanpool operations;
- (26) To provide and operate regional transportation services for the elderly and handicapped;
- (27) To provide other transportation related services, including air quality monitoring and analysis, as determined by the Board of Trustees;
- (28) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund,

- whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and
- (29) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties.

"§ 160A-640. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction.

"§ 160A-641. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-642. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an Authority any funds appropriated for transportation, or any funds whose use is not restricted by law.

"§ 160A-643. Competition.

No equipment of the Authority may be used for charter, tour, or sight-seeing service.

"§ 160A-644. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of

prior mutual agreement between the Authority and the respective unit of local government.

"§ 160A-645. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority.

"§ 160A-646. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling.

"§ 160A-647. Bonds and notes authorized.

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date.

"§ 160A-648. Equipment trust certificates.

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid.

"§ 160A-649. Power of eminent domain.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes.

"§ 160A-650. Tax exemption.

The property of the Authority, both real and personal, its acts, activities, and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of

the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes.

"§ 160A-651. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances, or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate, or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances, or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(c) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-649 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(d) Any affected public utility, railroad, or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-649, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(e) The method and procedures of a particular adjustment to the facilities of a public utility, railroad, or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(f) The Authority shall reimburse the public utility, railroad, or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances, or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances."

Section 2. G.S. 105-164.14(c)(15) reads as rewritten:

"(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 3. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority,

special airport district, regional public transportation authority, regional transportation authority, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Section 3.1. If Senate Bill 352 is enacted and provides that funds appropriated to the Department of Transportation for the 1997-98 fiscal year shall be used to fund a Major Investment Study (MIS) which shall include:

- (1) A passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem generally following the I-40 corridor; and
- (2) A passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities,

then notwithstanding that act, the MIS shall be administered by the Regional Transportation Authority created under this act which includes Guilford and Forsyth Counties, in consultation with the Department of Transportation, the Forsyth County Metropolitan Planning Organization (MPO), the Greensboro MPO, and the High Point MPO.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 1997.

Became law upon approval of the Governor at 1:48 p.m. on the 14th day of August, 1997.

S.B. 125

CHAPTER 394

AN ACT TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO ENCOURAGE THE REDEVELOPMENT OF BROWNFIELDS BY APPROVING THE IMPOSITION OF RESTRICTIONS ON INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITES AND ON OIL OR HAZARDOUS SUBSTANCE DISCHARGES OR RELEASES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.3 is amended by adding a new subsection to read:

"(f) In order to reduce or eliminate the danger to public health or the environment posed by an inactive hazardous substance or waste disposal site, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The

Secretary may approve restrictions included in a remedial action plan in accordance with standards determined as provided in subsection (d) of this section or pursuant to rules adopted under Chapter 150B of the General Statutes. Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the inactive hazardous substance or waste disposal site. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction."

Section 2. G.S. 130A-310.8 reads as rewritten:

"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

(a) After determination by the Department of the existence and location of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within 180 days after official notice to him the owner to do so, shall submit to the Department a survey plat of areas designated by the Department which that has been prepared and certified by a professional land surveyor, and entitled 'NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE'. Where an inactive hazardous substance or waste disposal site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- (1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks; and benchmarks.
- (2) The type, location, and quantity of hazardous substances disposed of known by the owner of the site to exist on the site, to the best of the owner's knowledge. site.
- (3) Any restrictions approved by the Department on the current or future use of the site.

~~Where an Inactive Hazardous Substance or Waste Disposal Site is located on more than one parcel or tract of land, a composite map or plat showing all such sites may be recorded.~~

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds' office in the county or counties in which the land is ~~located.~~ located within

15 days of the date on which the owner receives approval of the Notice from the Department.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file such Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice.

~~(f) A Notice of Inactive Hazardous Substance or Waste Disposal Site shall be cancelled by the Secretary after the hazards have been eliminated. The Secretary shall send to the register of deeds of the county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the landowners as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry. A Notice of Inactive Hazardous Substance or Waste Disposal Site filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry~~

is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(g) This section shall apply with respect to any facility, structure, or area where disposal of any hazardous substance or waste has occurred which is undergoing voluntary remedial action pursuant to this Part."

Section 3. G.S. 130A-310.9(b) reads as rewritten:

"(b) The Secretary may enter into an agreement with an owner, operator, or other responsible party ~~which that~~ provides for implementation of a voluntary remedial action program in accordance with a remedial action plan approved by the Department. Investigations, evaluations, and voluntary remedial actions are subject to the provisions of G.S. 130A-310.1(c), 130A-310.1(d), 130A-310.3(d), 130A-310.3(f), 130A-310.5, 130A-310.8, and any other requirement imposed by the Department. A voluntary remedial action and all documents that relate to the voluntary remedial action shall be fully subject to inspection and audit by the Department. At least 30 days prior to entering into any agreement providing for the implementation of a voluntary remedial action program, the Secretary shall mail notice of the proposed agreement as provided in G.S. 130A-310.4(c)(2). Sites undergoing voluntary remedial actions shall be so identified as a separate category in the inventory of sites maintained pursuant to G.S. 130A-310.1 but shall not be included on the Inactive Hazardous Waste Sites Priority List required by G.S. 130A-310.2."

Section 4. G.S. 143-215.84 is amended by adding a new subsection to read:

"(e) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be

declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction."

Section 5. Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.85A. *Recordation of oil or hazardous substance discharge sites.*

(a) The owner of the real property on which a site is located that is subject to current or future use restrictions approved as provided in G.S. 143-215.84(e) shall submit to the Department a survey plat as required by this section within 180 days after the owner is notified to do so. The survey plat shall identify areas designated by the Department, shall be prepared and certified by a professional land surveyor, and shall be entitled 'NOTICE OF OIL OR HAZARDOUS SUBSTANCE DISCHARGE SITE'. Where an oil or hazardous substance discharge site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- (1) The location and dimensions of the disposal areas and areas of potential environmental concern with respect to permanently surveyed benchmarks.
- (2) The type, location, and quantity of hazardous substances disposed of known by the owner of the site to exist on the site, to the best of the owner's knowledge, site.
- (3) Any restrictions approved by the Department on the current or future use of the site.

(b) After the Department approves and certifies the Notice, the owner of the site shall file the certified copy of the Notice in the register of deeds office in the county or counties in which the land is located within 15 days of the date on which the owner receives approval of the Notice from the Department.

(c) The register of deeds shall record the certified copy of the Notice and index it in the grantor index under the names of the owners of the lands.

(d) In the event that the owner of the site fails to submit and file the Notice required by this section within the time specified, the Secretary may prepare and file the Notice. The costs thereof may be recovered by the Secretary from any responsible party. In the event that an owner of a site who is not a responsible party submits and files the Notice required by this section, he may recover the reasonable costs thereof from any responsible party.

(e) When an oil or hazardous substance discharge site that is subject to current or future land-use restrictions under this section is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been used as an oil or hazardous substance discharge site and a reference by book and page to the recordation of the Notice.

(f) A Notice of Oil or Hazardous Substance Discharge Site filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry."

Section 6. G.S. 143-215.88B is amended by adding a new subsection to read:

"(h) Any person who knowingly and willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or rules adopted under this Article; or who knowingly and willfully makes a false statement of a material fact in a rule-making proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly and willfully renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules adopted under this Article is guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that the fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues."

Section 7. This act becomes effective 1 October 1997.

In the General Assembly read three times and ratified this the 5th day of August, 1997.

Became law upon approval of the Governor at 1:49 p.m. on the 14th day of August, 1997.

H.B. 651

CHAPTER 395

AN ACT TO ALLOW THE ISSUANCE OF CERTAIN ALCOHOLIC BEVERAGE CONTROL PERMITS IN INTERSTATE ECONOMIC DEVELOPMENT ZONES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006 is amended by adding a new subsection to read:

"(m) Interstate Interchange Economic Development Zones. -- The Commission may issue permits listed in G.S. 18B-1001(10), without

approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

- (1) Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;
- (2) Operates ABC stores;
- (3) Borders on another state; and
- (4) Lies north and east of the Roanoke River."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 1997.

Became law upon approval of the Governor at 1:50 p.m. on the 14th day of August, 1997.

H.B. 1052

CHAPTER 396

AN ACT TO ALLOW INSURERS TO LIMIT OR EXCLUDE EXCESS LIABILITY COVERAGE FOR UNINSURED AND UNDERINSURED MOTORISTS AS PROVIDED BY LAW AND TO ALLOW INJURED PARTIES TO EXECUTE COVENANTS NOT TO ENFORCE JUDGMENT AS CONSIDERATION FOR PAYMENT OF THE APPLICABLE LIMITS OF LIABILITY BY THE INSURER.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-152. Excess liability policies; uninsured and underinsured motorist coverages.

With respect to policy forms that provide excess liability coverage, an insurer may limit or exclude coverage for uninsured motorists as provided in G.S. 20-279.21(b)(3) and for underinsured motorists as provided in G.S. 20-279.21(b)(4)."

Section 2. G.S. 20-279.21(b)(4) reads as rewritten:

- "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000) as selected by the policy owner. An 'uninsured motor vehicle,' as described in subdivision (3) of this subsection, includes an 'underinsured highway vehicle,' which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and

insured under the owner's policy. For the purposes of this subdivision, the term 'highway vehicle' means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of

the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle

may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by

the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

Section 3. G.S. 20-279.21 is amended by adding a new subsection to read:

"(1) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 1997.

Became law upon approval of the Governor at 1:52 p.m. on the 14th day of August, 1997.

S.B. 847

CHAPTER 397

AN ACT TO EXEMPT FROM SALES AND USE TAX REUSABLE INDUSTRIAL CONTAINERS USED AS PACKAGING FOR TANGIBLE PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13(23) reads as rewritten:

"(23) Sales of the following packaging items:

- a. wrapping Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.
- b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse."

Section 2. This act becomes effective October 1, 1997, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 1:53 p.m. on the 14th day of August, 1997.

S.B. 974

CHAPTER 398

AN ACT TO AUTHORIZE THE EMPLOYMENT SECURITY COMMISSION TO WAIVE INTEREST ON LATE CONTRIBUTIONS, TO MODIFY THE CALCULATION AND COLLECTION OF UNEMPLOYMENT INSURANCE TAXES, AND TO GIVE FLEXIBILITY TO THE EMPLOYMENT SECURITY COMMISSION IN SCHEDULING WHEN CLAIMANTS MUST REPORT TO THE LOCAL COMMISSION OFFICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-10(j) reads as rewritten:

"(j) Waiver of Interest and Penalties. -- The Commission may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The Commission ~~shall have the power to~~ may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;
- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the Commission to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Commission upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
- (6) Other circumstances where, in the opinion of the Chairman, the Assistant Administrator, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Chairman, the Assistant Administrator, or their designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

~~Such waiver~~ The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the Commission. The reason for any such reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

Section 2. G.S. 96-10(a) reads as rewritten:

"(a) Interest on Past-Due Contributions. -- Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate of ~~one-half of one percent (0.5%) set under G.S. 105-241.1(i)~~ per month from and after ~~such~~ that date until payment plus accrued interest is received by the Commission. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added, but ~~said~~ that penalty shall in no event be less than five dollars (\$5.00). Penalties and interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Commission, ~~which and the~~ contributions were legally payable to this State, ~~such the~~ contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if ~~they were~~ paid by the due date of ~~such the~~ other state or the United States."

Section 3. G.S. 96-10(i) reads as rewritten:

"(i) ~~No~~ Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this ~~chapter~~ Chapter after five years from the date on which ~~such the~~ contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which ~~such the~~ suit or proceeding is ~~instituted; provided, that this~~ instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter: ~~Provided, further, that a~~ Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the chairman of the Commission directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by ~~registered~~ certified mail to the last known address of the employing unit: ~~Provided, further, that the order mentioned herein unit.~~ The order shall be deemed to have been issued on the date ~~such the~~ order is mailed by ~~registered~~ certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Commission is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed."

Section 4. G.S. 96-9(b)(2) reads as rewritten:**"(2) Experience Rating. --**

- a. **Waiting Period for Rate Reduction. --** No employer's contribution rate shall be reduced below the standard rate for any calendar year until its account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters pursuant to G.S. 96-9(a).
- b. **Credit Ratio. --** The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.
- c. **Debit Ratio. --** The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all its contributions paid and credited for all past periods in accordance with G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to its account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.
- d. **Other Provisions. --** ~~For purposes of this subsection, the first date on which an account shall be chargeable with benefits shall be the first date with respect to which a benefit year as defined in G.S. 96-8 can be established, based in whole or in part on wages paid by that employer.~~
No employer's contribution rate shall be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements of that schedule used in computing

rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and its predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the Commission shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith."

Section 5. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that --

- (1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission at regular intervals no more than four of not less than three weeks and not more than six weeks apart and in accordance with such regulations as the Commission may prescribe;
- (2) He has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);
- (3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal

operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:

1. a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;

- b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and
 - c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,
2. Such approval is required for the Commission to receive the benefits of federal law.
- (4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.
- (5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services."

Section 6. Section 2 of this act becomes effective January 1, 1998, and applies to contributions due on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 1:58 p.m. on the 14th day of August, 1997.

H.B. 485

CHAPTER 399

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.20(e1) reads as rewritten:

"(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral establishment, establishment or other licensee under this Article, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or

other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

Section 2. G.S. 90-210.23(d) reads as rewritten:

"(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which ~~he the person~~ is a licensee or resident ~~trainee, and every trainee~~. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its records thereof shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and funeral service establishment shall provide the Board with ~~his or its~~ a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board."

Section 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service ~~establishments, establishments and embalming facilities, their operation~~ operation, and the licenses under which they are operated, and to enforce as provided by law the rules, ~~regulations~~ regulations, and requirements of the Division of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility which, that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time."

Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

"(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being ~~conducted~~ conducted or a body is being embalmed, to inspect the records, office, ~~or establishment,~~ establishment, or facility, or to inspect the practice being carried

on or license or registration of any licensee and any resident trainee operating therein;".

Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

"(1) To be licensed for the practice of funeral directing under this Article, a person must:

- a. Be at least 18 years of age, age.
- b. Be of good moral ~~character,~~ character.
- c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including the subjects set out in ~~items item~~ e.1. and 2. of this subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board.
- d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.
- e. Have passed an oral or written funeral director examination on the following subjects:
 1. ~~Basic health sciences, including microbiology, hygiene, and public health, Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.~~
 2. ~~Funeral service administration, including accounting, psychology, funeral principles and directing, and~~
 3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

"(2) To be licensed for the practice of embalming under this Article, a person must:

- a. Be at least 18 years of age, age.
- b. Be of good moral ~~character,~~ character.
- c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.
- d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.
- e. Have passed an oral or written embalmer examination on the following subjects:
 1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology, Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.~~

2. ~~Funeral service sciences, including embalming and restorative art, and~~
3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

"(3) To be licensed for the practice of funeral service under this Article, a person must:

- a. Be at least 18 years of ~~age, age.~~
- b. Be of good moral ~~character, character.~~
- c. Be a graduate of a mortuary science college approved by the ~~Board, Board.~~
- d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and subsection.~~
- e. Have passed an oral or written funeral service examination on the following subjects:
 1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology hygiene and public health, Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.~~
 2. ~~Funeral service sciences, including embalming and restorative art, Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.~~
 3. ~~Funeral service administration, including accounting, psychology, funeral principles and directing, and~~
 4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment; ~~except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.~~ enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General Assembly. The waiver for 25-year licensees shall apply

only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Section 9. G.S. 90-210.25 is amended by adding a new subsection to read:

"(al) Inactive Licenses. -- Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board."

Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

"(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. ~~Provided, Except for~~ special permits issued by the Board for teaching continuing

education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article."

Section 11. G.S. 90-210.25(d) reads as rewritten:

"(d) Establishment Permit. --

- (1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.
- (2) A permit shall be issued when:
 - a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral ~~establishment, establishment.~~
 - b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment,
 - c. It is shown that the funeral establishment satisfies the requirements of ~~G.S. 90-210.27A, and G.S. 90-210.27A.~~
 - d. The Board receives payment of the permit fee.
- (3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a ~~partner~~ partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

- (4) The Board may suspend or revoke a permit when an owner, ~~partner~~ partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.
- (5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment."

Section 12. G.S. 90-210.25 is amended by adding a new subsection to read:

"(d1) Embalming Outside Establishment. -- An embalmer who engages in embalming in a facility other than a funeral establishment or in the

residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board."

Section 13. G.S. 90-210.25(e) reads as rewritten:

"(e) Revocation; Suspension; Compromise; Disclosure. --

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

- a. Conviction of a felony or a crime involving fraud or moral ~~turpitude~~; turpitude.
- b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral ~~service~~; service.
- c. False or misleading advertising as the holder of a ~~license~~; license.
- d. Solicitation of dead human bodies by the ~~licensee~~, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the ~~licensee~~; licensee.
- e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular ~~licensee~~; licensee.
- f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business~~; business.
- g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral ~~service~~; service.
- h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the ~~licensee~~; licensee.
- i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of; of.
- j. Violating or cooperating with others to violate any of the provisions of this ~~Article or of Article~~, the rules and regulations of the ~~Board~~; Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies~~; bodies.

- l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody ~~thereof; thereof.~~
- m. Knowingly making any false statement on a certificate of ~~death;~~ death.
- n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than one thousand dollars (\$1,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

- (2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the ~~next of kin and of the persons who may be chargeable with the funeral expenses of such decedent.~~ persons who have the legal authority to direct the disposition of the decedent's body. If any ~~such kin be persons~~ are found, ~~his or her~~ their authority and directions shall govern the disposal of the remains of ~~such the~~ decedent. Any funeral service establishment receiving ~~such the~~ remains in violation ~~hereof of this subsection~~ shall make no charge for any service in connection with ~~such the~~ remains prior to delivery of ~~same the~~ remains as stipulated by ~~such kin; the persons having legal authority to direct the disposition of the body. provided, however, this~~ This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the next of kin or the persons chargeable with the expenses persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting

forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e)."

Section 14. G.S. 90-210.27A reads as rewritten:

"§ 90-210.27A. *Funeral establishments.*

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

- (1) Contain one standard type operating ~~table~~; table.
- (2) Contain facilities for adequate ~~drainage~~; drainage.
- (3) Contain a sanitary waste ~~receptacle~~; receptacle.
- (4) Contain an instrument ~~sterilizer~~; sterilizer.
- (5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily ~~cleaned~~; cleaned.
- (6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all ~~times~~; times.
- (7) Have a placard or sign on the door indicating that the preparation room is ~~private~~; and private.
- (8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a repose room for dead human bodies, of suitable size to accommodate a casket and visitors.

~~(d) No person who has been convicted of a felony shall:~~

- ~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~
- ~~(2) Be a partner in a funeral establishment if it is owned by a partnership;~~
- ~~(3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.~~

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged, on a day-to-day basis, engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Section 15. G.S. 90-210.28 reads as rewritten:

"§ 90-210.28. *Fees.*

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	\$250.00
Annual renewal	175.00
Late renewal penalty	100.00
Establishment reinspection <u>Reinspection fee</u>	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00
Out-of-state licensee	
Application	200.00
Embalmer, funeral director,	
funeral service	
Application--North	
Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or	
funeral director	50.00
-funeral service	100.00
Reinstatement fee	50.00
Resident trainee permit	
Application	50.00
Annual renewal	35.00
Late renewal penalty	25.00
Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for

and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Section 16. G.S. 90-210.41 reads as rewritten:

"§ 90-210.41. *Definitions.*

As used in this Article, unless the context requires otherwise:

- (1) 'Authorizing agent' means a person legally entitled to order order, or carry out the legal order for, the cremation of human remains. ~~An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased.~~ In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.
- (2) 'Board' means the North Carolina State Board of Mortuary Science.
- (3) ~~'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.~~
- (4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.
- (5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.
- (6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.
- (7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.
- (8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.
- (9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business.

A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

- (10) 'Crematory authority' means the North Carolina Crematory Authority.
- (11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.
- (12) ~~'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.~~
- (13) 'Human remains' means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body or limb that has been removed from a living or deceased person.
- (14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.
- (15) ~~'Scattering area' means a designated area for the scattering of cremated remains.~~
- (16) ~~'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.~~
- (17) ~~'Urn' means a receptacle designed to permanently encase the cremated remains."~~

Section 17. G.S. 90-210.43 reads as rewritten:

"§ 90-210.43. *Licensing and inspection.*

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.~~

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this ~~Article~~. Article, or unless otherwise permitted by statute.

(f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, ~~partner~~ partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

- (1) Conviction of a felony or a crime involving fraud or moral ~~turpitude~~; turpitude.
- (2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of ~~cremation~~; cremation.
- (3) False or misleading ~~advertising~~; advertising.
- (4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation ~~services~~; services.
- (5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed of; of.
- (6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the ~~Board~~; Board.
- (7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies~~; bodies.
- (8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in ~~G.S. 90-210.47(e)~~; G.S. 90-210.47(e).
- (9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in

compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars (\$1,000).

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

Section 18. G.S. 90-210.44 reads as rewritten:

"§ 90-210.44. *Authorization and record keeping.*

The Board shall establish requirements for record ~~keeping and keeping~~, authorizations, and cremation reports. ~~It~~ It shall be a violation of this Article for any crematory operator to fail to comply with the requirements."

Section 19. G.S. 90-210.45 reads as rewritten:

"§ 90-210.45. *Cremation procedures.*

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation,

being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(c1) Human remains shall be cremated only while enclosed in a cremation container.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process."

Section 20. G.S. 90-210.46(a) reads as rewritten:

"(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. ~~A copy of this statement shall be retained by the crematory operator.~~ The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

Section 21. G.S. 90-210.47(b) reads as rewritten:

"(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization."

Section 22. G.S. 90-210.48(a) reads as rewritten:

"§ 90-210.48. Fees.

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

(1)	Licensee application fee.	\$400.00
(2)	Annual renewal fee.	150.00
(3)	Late renewal penalty.	75.00
(4)	Re-inspection fee.	100.00
(5)	Per cremation fee.	10.00
(6)	Late fee, per cremation.	10.00
(7)	Late fee, cremation report.	75.00 per month."

Section 23. G.S. 90-210.60(3) reads as rewritten:

"(3) 'Insurance company' means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;"

Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

"(2) The original contracting preneed licensee shall immediately pay all ~~such~~ funds received to the successor funeral establishment ~~so designated; designated, provided, however, regardless~~ Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~and provided further, if~~ Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made to it as is permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee may retain up to ten percent (10%) of ~~said~~ the funds received from the financial institution. Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon."

Section 25. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

Section 26. G.S. 90-210.66(b) reads as rewritten:

"(b) From the fee of ~~fifteen dollars (\$15.00)~~ for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve."

Section 27. G.S. 90-210.67 reads as rewritten:

"§ 90-210.67. *Application for license.*

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license.

The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than one hundred fifty dollars (\$150.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars (\$150.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and Each each preneed funeral establishment licensee shall pay annually to the Board on or before June 30 of each year that date a license renewal fee of not more than one hundred fifty dollars (\$150.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars (\$50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars (\$50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the

application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and ~~Each~~ each preneed sales licensee shall pay annually to the Board on or before ~~June 30 of each year~~, that date a license renewal fee of not more than fifty dollars (\$50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars (\$25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee of ~~fifteen dollars (\$15.00)~~ not to exceed twenty dollars (\$20.00) for each ~~sale~~, sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars (\$25.00) for each late filing and payment. The fee fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars (\$25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars (\$150.00) for the late filing of an annual report.

(e) The fees collected under this Article, except for monies used pursuant to G.S. 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of this Article. Any funds collected under this Article and remaining with the Board after all expenses under this Article for the current fiscal year have been fully provided for shall be paid over to the General Fund of the State of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts under this Article for the previous fiscal year of its operations, as a maximum contingency or emergency fund.

(f) Any entity licensed by the Commissioner of Banks under Article 13B of Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its license renewed notwithstanding that it is not a funeral establishment, provided it otherwise satisfies the requirements of this Article."

Section 28. G.S. 90-210.68 reads as rewritten:

"§ 90-210.68. *Licensee's books and records; notice of transfers, assignments and terminations.*

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or

after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars (\$100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination; provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary ~~may~~ shall order the

contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the substitute licensee agrees to accept such assignment.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee."

Section 29. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, If if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

- (1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license; license.
- (2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities; activities.
- (3) A crime involving fraud or moral turpitude by conviction thereof; thereof.
- (4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning; planning.
- (5) False or misleading advertising; or advertising.
- (6) Violating or cooperating with others to violate any provision of this Article or Article, the rules and regulations of the Board, pursuant thereto, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars (\$1,000)."

Section 30. G.S. 90-210.69(e) reads as rewritten:

"(e) All hearings under this Article shall be conducted pursuant to G.S. 150B-40(e). Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes."

Section 31. G.S. 90-210.70(c) reads as rewritten:

"(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided."

Section 32. G.S. 90-210.70(d) reads as rewritten:

"(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The

Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence of criminal violation, that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly."

Section 33. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-210.73. Not public record.

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes."

Section 34. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 7. Disposition of Body or Body Parts.

"§ 130A-422. Authority to dispose of body or body parts.

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

- (1) The surviving spouse.
- (2) A majority of the surviving children.
- (3) The surviving parents.
- (4) A majority of the surviving siblings.
- (5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.
- (6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

Section 35. The Board shall adopt temporary rules to implement the provisions of this act.

Section 36. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 2:10 p.m. on the 14th day of August, 1997.

H.B. 1097

CHAPTER 400

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT; STUDIES

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review

the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

Section 1.3. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to licensing coastal recreational fishing. The Joint Legislative Commission on Seafood and Aquaculture shall make specific findings as to whether a licensing system should be adopted for coastal recreational fishing and, if so, what that system should be and how it should be implemented. In conducting the study required by this section, the Joint Legislative Commission on Seafood and Aquaculture shall consider the findings and recommendations of the final report of the Fisheries Moratorium Steering Committee and the final report of the State Auditor on the performance audit of the Division of Marine Fisheries required by Section 1.2 of this act. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.4. The Joint Legislative Commission on Seafood and Aquaculture shall study issues related to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale. The Joint Legislative Commission on Seafood and Aquaculture shall make a specific determination as to whether a crew license should be established. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.5. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to the enhancement and management of shellfish resources and shall develop a set of comprehensive recommendations for the enhancement and management of the shellfish resources of the State. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.6. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to whether either a limited shellfish license or an exemption from shellfish license requirements should be established to allow students under the age of 18 to take and sell shellfish during the summer months. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 1.7. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 1.8. The Joint Legislative Commission on Seafood and Aquaculture shall study procedures and rules used by the Appeals Panel established by subsection (d) of Section 3 of Chapter 576 of the 1993 Session Laws (1994 Regular Session), as amended by Section 1 of Chapter 770 of the 1993 Session Laws (1994 Regular Session) in the review of

license applications. The Appeals Panel shall prepare and submit a detailed summary of its activities, including all decisions to issue or deny licenses, to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 December 1997. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"§ 143B-289.20. Definitions.

(a) As used in this Part:

- (1) 'Commission' means the Marine Fisheries Commission.
- (2) 'Department' means the Department of Environment, Health, and Natural Resources.
- (3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.
- (4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

- (1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132.
- (2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.
- (3) Implement management measures regarding ocean and marine fisheries in the Atlantic Ocean consistent with the authority conferred on the State by the United States.
- (4) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"§ 143B-289.22. Marine Fisheries Commission -- powers and duties.

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

- (1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
 - a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
 - b. Seasons for taking fish.
 - c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.
- (2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.
- (3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.
- (4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.
- (5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).
- (6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.
- (7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.
- (8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).
- (9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.
- (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.
- (11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

- (12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

- (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.
- (2) To manage the disposition of confiscated property as set forth in G.S. 113-137.
- (3) To govern all license requirements and taxes prescribed in Article 14 of Chapter 113 of the General Statutes.
- (4) To regulate the importation and exportation of fish and equipment that may be used in taking or processing fish as necessary to enhance the conservation of marine and estuarine resources of the State, as provided in G.S. 113-160.
- (5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-164.
- (6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.
- (7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.
- (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.
- (9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.
- (10) To regulate the location and utilization of artificial reefs in coastal waters.
- (11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission may adopt rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption of a fisheries management plan by the Atlantic States Marine Fisheries Council or an interstate fisheries management council.

(f) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(g) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

- (1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.
- (2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.
- (3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

- (1) The degree and extent of harm to the marine and estuarine resources within the jurisdiction of the Commission, as described in G.S. 113-132; to the public health; or to private property resulting from the violation.
- (2) The frequency and gravity of the violation.
- (3) The cost of rectifying the damage.
- (4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters

of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

- (3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.
- (4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.
- (5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.
- (6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.
- (7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.
- (8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.
- (9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the

advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

- (3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

- (1) The Finfish Committee, which shall consider matters concerning finfish.
- (2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.
- (3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.
- (4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"§ 143B-289.28. Marine Fisheries Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

- (1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.
- (2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

- (1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.
- (2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.
- (3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct

expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"§ 143B-289.29. Conservation Fund; Commission may accept gifts.

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars (\$5.00).

"§ 143B-289.30. Article subject to Chapter 113.

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"§ 143B-289.31. Jurisdictional questions.

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or

administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

Section 2.2. G.S. 143B-289.22(b), as enacted by Section 2.1 of this act, reads as rewritten:

"(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

- (1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.
- (2) To manage the disposition of confiscated property as set forth in G.S. 113-137.
- (3) To govern all license requirements and taxes prescribed in Article 14 14A of Chapter 113 of the General Statutes.
- (4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. ~~113-160~~, 113-170.
- (5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. ~~113-164~~, 113-170.4.
- (6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.
- (7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.
- (8) To govern the utilization of private fisheries, as provided in G.S. 113-205.
- (9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.
- (10) To regulate the location and utilization of artificial reefs in coastal waters.
- (11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-279.8. Coastal Habitat Protection Plans.

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The goal of the Plans shall be the long-term enhancement of coastal fisheries associated with each coastal habitat identified in subdivision (1) of this subsection. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

- (1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.
- (2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.
- (3) Identify existing and potential threats to the habitats and the impact on coastal fishing.
- (4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year.

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture shall concurrently review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-182.1. Fishery Management Plans.

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

- (1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

- (2) Recommend management actions pertaining to the fishery or fisheries.
- (3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

"(12a) Optimal yield. -- The amount of fish that:

- a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

- b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and
- c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

(12b) Overfishing or overfished. -- A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-187 reads as rewritten:

"§ 113-187. *Penalties for violations of Subchapter and rules.*

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.
- (4) Violating the provisions of a special permit or gear license issued by the Department.
- (5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-190. *Unlawful sale or purchase of fish; criminal and civil penalties.*

(a) Any person who sells fish in violation of G.S. 113-154.1 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-156 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-154.1 or purchases fish in violation of G.S. 113-156.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.3. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All

proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Such Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.4. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

Section 4.5. G.S. 113-190, as enacted by Section 4.2 of this act, reads as rewritten:

"§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.

(a) Any person who sells fish in violation of G.S. ~~113-154.1~~ 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. ~~113-156~~ 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. ~~113-154.1~~ 113-168.4 or purchases fish in violation of G.S. ~~113-156, 113-169.3.~~

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"§ 113-168. Definitions.

As used in this Article:

- (1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.
- (2) 'Commission' means the Marine Fisheries Commission.
- (3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.
- (4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.
- (5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.
- (6) 'RCGL' means Recreational Commercial Gear License.
- (7) 'RSCFL' means Retired Standard Commercial Fishing License.
- (8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without being licensed as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which the license is issued; the date on which the license

expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"§ 113-168.2. Standard Commercial Fishing License.

(a) Requirement. -- No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar (\$10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be eight hundred dollars (\$800.00) or the amount charged to a North Carolina resident in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars (\$200.00).

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name and mailing address, and the duration of the assignment. A notarized

copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. -- A SCFL may be transferred:

- (1) By the license holder to a member of the license holder's immediate family.
- (2) By the State to the estate of the license holder upon the death of the license holder.
- (3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.
- (4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.
- (5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"§ 113-168.3. Retired Standard Commercial Fishing License.

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fees. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL. Proof of age shall be supplied at the time the application is made. The annual fee for a RSCFL for a North Carolina resident shall be one hundred dollars (\$100.00). The annual fee for a RSCFL for a person who is not a resident of North Carolina shall be eight hundred dollars (\$800.00) or the amount charged to a North Carolina resident in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars (\$100.00).

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to

a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignment. -- The RSCFL shall not be assignable.

"§ 113-168.4. Regulations concerning the sale of fish.

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars (\$100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement

of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.

- (3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:

- a. One dollar (\$1.00) per foot for a vessel not over 18 feet in length.
- b. One dollar and fifty cents (\$1.50) per foot for a vessel over 18 feet but not over 38 feet in length.
- c. Three dollars (\$3.00) per foot for a vessel over 38 feet but not over 50 feet in length.
- d. Six dollars (\$6.00) per foot for a vessel over 50 feet in length.

- (4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

- (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The

application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing is eligible to purchase a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. The Commission shall establish a fee for each permit in an amount that compensates the Division for the actual administrative costs associated with the permit but that does not exceed fifty dollars (\$50.00) per permit.

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars (\$25.00) upon proof that the license applicant is a resident of North Carolina.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct

name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. -- Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:

- a. One bushel of oysters per day.
- b. One-half bushel of scallops per day.
- c. One hundred clams per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

- a. Two bushels of oysters per day.
- b. One bushel of scallops per day.
- c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the

State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

- (1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
- (2) To sell fish to the public; or
- (3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

- (1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;
- (2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;
- (3) The fish are shipped to a person by a dealer from without the State;
- (4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or
- (5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

- (1) Dealing in oysters: \$50.00;
- (2) Dealing in scallops: \$50.00;
- (3) Dealing in clams: \$50.00;
- (4) Dealing in hard or soft crabs: \$50.00;
- (5) Dealing in shrimp, including bait: \$50.00;
- (6) Dealing in finfish, including bait: \$50.00;
- (7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: \$50.00; or
- (8) Consolidated license (all categories): \$300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) The owner or operator of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is two hundred dollars (\$200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"§ 113-170. Exportation and importation of fish and equipment.

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"§ 113-170.1. Nonresidents reciprocal agreements.

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"§ 113-170.2. Fraud or deception as to licenses, permits, or records.

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or

otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

"§ 113-170.3. Record-keeping requirements.

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"§ 113-170.5. Violations with respect to coastal fisheries resources.

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest or judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

- (1) No notice of appeal has been given;
- (2) The time for appeal has expired without an appeal having been perfected; or
- (3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams

from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation

requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

- (1) Offenses that occurred three years prior to the effective date of this Article; or
- (2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Division. The fee for a license for a spotter plane is one hundred dollars (\$100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

- (1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.
- (2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.
- (3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"§ 113-172. License agents.

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue licenses authorized under this Article in accordance with this Article and the

rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar (\$1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"§ 113-173. *Recreational Commercial Gear License.*

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars (\$35.00). The fee for a RCGL for an

individual who is not a North Carolina resident shall be two hundred fifty dollars (\$250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

- (1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.
- (2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.
- (3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division shall issue

SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. Article 14 of Chapter 113 of the General Statutes is repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 1999.

Section 5.6. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.7. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

Section 5.8. G.S. 113-154.1 reads as rewritten:

"§ 113-154.1. *Endorsement to sell fish.*

(a) **Requirements.** -- Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission from coastal fishing waters by any means whatever, including aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such fish, without having first procured a current and valid endorsement to sell fish. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel license with an endorsement to sell, or a separate endorsement to sell if no vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-156.

(b) **Fees.** -- The annual fee for an endorsement to sell fish on a vessel license for a resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to sell fish when no vessel is involved for a resident of this State is fifteen dollars (\$15.00) and for a nonresident of this State is one hundred dollars (\$100.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. The license shall be valid for the period July 1 through June 30 of a given year.

(c) **Non-Vessel Endorsement Format.** -- The format of an endorsement when the applicant is not seeking a vessel license shall include the name of the applicant, date of birth, expiration date of the endorsement, and any other information the Division deems necessary to accomplish the purposes of this Subchapter. The endorsement shall be issued on a card made of hard plastic or metal capable of being used to make imprints of the sale or transaction. An applicant who is applying for an endorsement on a vessel license shall comply with G.S. 113-152.

(d) **Application for Non-Vessel Endorsement.** -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City offices of the Division of Marine Fisheries or license agents

authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City offices of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received.

(f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal fishing waters except to:

- (1) Fish dealers licensed under G.S. 113-156; or
- (2) The public, if the seller is also licensed as a fish dealer under G.S. 113-156.

(g) Recordkeeping Requirements. -- The fish dealer shall record each transaction on a form provided by the Department. The transaction form shall include the information on the endorsement to sell of the seller, the quantity of the fish, the identity of the fish dealer, and such other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Department, and to the other party of the transaction. The Department copy of each transaction from the preceding month shall be transmitted to the Department by the fish dealer on or before the tenth day of the following month.

(h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel endorsement to sell fish issued under this section is nontransferable. It is unlawful to use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a license to sell with the following two exceptions: (i) an individual under the age of 16 may sell fish under the license of a relative or guardian; or (ii) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen. It is unlawful for a licensee to lend or transfer a license to sell for the purpose of circumventing the requirements of this section.

(h1) Transfer of Endorsement to Sell Fish on a Vessel License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons. -- A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred

by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:

- (1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.
- (2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.

(i) (See note) Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

- (1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is punishable as follows:

- a. For a first conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars (\$50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars (\$250.00).
- b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars (\$250.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars (\$500.00).
- c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than five hundred dollars (\$500.00) or double the value of the fish which are the subject of the transaction, whichever is greater.

- (2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a).

(j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an endorsement to sell fish shall be applied to the cost of a fisheries data information system that compiles fisheries data obtained from the endorsement program established by G.S. 113-152 and this section or to marine fisheries programs or research projects that enhance knowledge and use of marine and estuarine resources."

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; and Section 3 of S.L. 1997-347, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1, 1994, 1994 and ending August 15, 1997 1 July 1999 under the following statutes:

- (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.
- (2) G.S. 113-153.1. ~~Crab license.~~ License.
- (3) G.S. 113-154. ~~Shellfish license license.~~
- (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish."

Section 6.2. The moratorium imposed by subdivision (4) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act on nonvessel endorsements to sell fish applies also to endorsements to sell fish on vessel licenses.

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19, as amended by Section 2 of S.L. 1997-286, is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes.

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.23), as amended by Sections 3, 4, and 5 of S.L. 1997-286, is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.44). Part 5C of Article 7 of Chapter 143B of the General Statutes shall be captioned "Division of North Carolina Aquariums."

(c) G.S. 143B-289.41(a)(1b)g., as recodified by subsection (b) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22, 143B-289.43.~~"

(d) G.S. 143B-289.43, as recodified by subsection (b) of this section and as amended, prior to being recodified, by Section 4 of S.L. 1997-286, reads as rewritten:

"§ 143B-289.43. *Local advisory committees; duties; membership.*

Local advisory committees created pursuant to G.S. ~~143B-289.20(a)(1b)~~ 143B-289.41(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary of Environment, Health, and Natural Resources for three-year

terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

Section 6.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

- (3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan."~~

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. The Revisor of Statutes shall set out Section 6.4 of this act as a note to G.S. 143B-289.21, as enacted by Section 2.1 of this act.

Section 6.9. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(e), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.10. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. The Marine Fisheries Commission is authorized to adopt rules, including temporary rules, to implement the provisions of Section 5.1 of this act. These implementing rules may be made effective no earlier than 1 April 1999. Beginning 1 April 1999, the Division of Marine Fisheries may prepare forms and sell licenses based on these implementing rules so as to effect an orderly implementation of Part V of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Cochair of the Joint Legislative Commission on Seafood and Aquaculture shall appoint an Advisory Committee to the Commission. The Advisory Committee shall be composed of persons who represent the broad range of interests involved in marine fisheries issues as determined by the Cochair. The Cochair of the Joint Legislative Commission on Seafood and Aquaculture shall designate a member or members of the Commission to serve as Chair or Cochair of the Advisory Committee. The Advisory Committee shall meet as determined by the Cochair of the Commission and, under the direction of the Cochair of the

Commission, shall assist the Commission in the development of recommendations on issues related to marine fisheries, including the issues to be studied by the Commission pursuant to Part I of this act.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session, Section 12 of S.L. 1997-256, and Section 8 of S.L. 1997-347, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 15, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 5.5, 5.6, 5.8, 6.2, 6.7, 6.10, 6.11, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.8 of this act become effective 1 September 1997. Sections 4.1, 4.2, and 4.3 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997. Sections 6.1 and 6.14 of this act become effective 15 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, and 6.9 of this act become effective 1 July 1998. Sections 2.2, 5.1, 5.2, 5.4, and 5.7 of this act become effective 1 July 1999. Section 4.5 of this act becomes effective 1 July 1999 and applies to violations and offenses on or after 1 July 1999. Sections 5.1 and 5.2 of this act expire 1 September 2003.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

Became law upon approval of the Governor at 2:35 p.m. on the 14th day of August, 1997.

S.B. 347

CHAPTER 401

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256, as rewritten by Section 1 of S.L. 1997-347, reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 15, 1997, August 22, 1997, these funds shall revert to the appropriate fund on that date."

EXTEND SENTENCING COMMISSION

Section 2. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, Chapter 236 of the 1995 Session Laws, Section 6 of S.L. 1997-256, and Section 2 of S.L. 1997-347, reads as rewritten:

"Sec. 6. This act is effective upon ratification, and shall expire August 15, 1997, August 22, 1997."

EXTEND MORATORIUM ON FISHING LICENSES

Section 3. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws, Section 7 of S.L. 1997-256, and Section 3 of S.L. 1997-347, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning July 1, 1994, and ending August 15, 1997, August 22, 1997, under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-153.1. Crab license.
- (3) G.S. 113-154. Shellfish license
- (4) G.S. 113-154.1. Nonvessel endorsements to sell fish."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 4. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 8 of S.L. 1997-256 and Section 4 of S.L. 1997-347, reads as rewritten:

"(c) Subsection (a) of this section expires August 15, 1997, August 22, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 5. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 9 of S.L. 1997-256 and Section 5 of S.L. 1997-347, reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by August 15, 1997, August 22, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 6. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 10 of S.L. 1997-256, and Section 6 of S.L. 1997-347, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire August 15, 1997, August 22, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 7. Section 11 of S.L. 1997-256, as rewritten by Section 7 of S.L. 1997-347, reads as rewritten:

"Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective August 15, 1997, August 22, 1997."

CORE SOUND/DESCRIPTION OF AREA A FOR SHELLFISH LEASE MORATORIUM

Section 8. Section 3 of Chapter 547 of the 1995 Session Laws (1996 Regular Session) as amended by Section 1 of Chapter 633 of the 1995 Session Laws (1996 Regular Session) and as rewritten by Section 27.33 of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 12 of S.L. 1997-256, and Section 8 of S.L. 1997-347, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at

Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 15, 1997,~~ August 22, 1997."

EFFECTIVE DATE

Section 10. (a) Section 13 of S.L. 1997-256, as rewritten by Section 9 of S.L. 1997-347, reads as rewritten:

"Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires ~~August 15, 1997,~~ August 22, 1997."

(b) Sections 3 and 8 of this act do not become effective if House Bill 1097, 1997 Regular Session, becomes law before this act. If House Bill 1097, 1997 Regular Session, becomes law after this act becomes law, then Sections 3 and 8 of this act expire the earlier of August 22, 1997, and the date that House Bill 1097, 1997 Regular Session, becomes law.

(c) Except as otherwise provided, this act becomes effective August 15, 1997.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

Became law upon approval of the Governor at 6:50 p.m. on the 14th day of August, 1997.

H.B. 302

CHAPTER 402

AN ACT TO ESTABLISH A PROCEDURE TO AUTHORIZE THE TAKING OF CERTAIN WILDLIFE IN COUNTIES OR DISTRICTS WHERE AN OUTBREAK OF RABIES HAS OCCURRED.

The General Assembly of North Carolina enacts:

Section 1. Part 6 of Article 6 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-201. Rabies emergency.

A local health director in whose county or district rabies is found in the wild animal population as evidenced by a positive diagnosis of rabies in the past year in any wild animal, except a bat, may petition the State Health Director to declare a rabies emergency in the county or district. In determining whether a rabies emergency exists, the State Health Director shall consult with the Public Health Veterinarian and the State Agriculture Veterinarian and may consult with any other source of veterinary expertise the State Health Director deems advisable. Upon finding that a rabies emergency exists in a county or district, the State Health Director shall petition the Executive Director of the Wildlife Resources Commission to develop a plan pursuant to G.S. 113-291.2(a) to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. Upon determination by the State Health Director that the rabies emergency no longer exists for a county or district,

the State Health Director shall immediately notify the Executive Director of the Wildlife Resources Commission."

Section 2. G.S. 113-291.2 is amended by adding the following new subsection to read:

"(a1) When the Executive Director of the Wildlife Resources Commission receives a petition from the State Health Director declaring a rabies emergency for a particular county or district pursuant to G.S. 130A-201, the Executive Director of the Wildlife Resources Commission shall develop a plan to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. The plan shall be based upon the best veterinary and wildlife management information and techniques available. The plan may involve a suspension or liberalization of any regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, except that the use of poisons, other than those used with dart guns, shall not be permitted under any circumstance. If the plan involves a suspension or liberalization of any regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, the Executive Director of the Wildlife Resources Commission shall prepare and adopt temporary rules setting out the suspension or liberalization pursuant to G.S. 150B-21.1(a)(1). The Executive Director shall publicize the plan and the temporary rules in the major news outlets that serve the county or district to inform the public of the actions being taken and the reasons for them. Upon notification by the State Health Director that the rabies emergency no longer exists, the Executive Director of the Wildlife Resources Commission shall cancel the plan and repeal any rules adopted to implement the plan. The Executive Director of the Wildlife Resources Commission shall publicize the cancellation of the plan and the repeal of any rules in the major news outlets that serve the county or district."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

Became law upon approval of the Governor at 12:58 p.m. on the 16th day of August, 1997.

S.B. 182

CHAPTER 403

AN ACT TO ALLOW THE WILDLIFE RESOURCES COMMISSION TO ADOPT CERTAIN TEMPORARY RULES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:

- (1) No wake zones;

(2) Hunting or fishing seasons;

(3) Hunting or fishing bag limits;

(4) Management of public game lands as defined in G.S. 113-129(8a).

When the Wildlife Resources Commission adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules."

Section 2. G.S. 150B-21.1(b) reads as rewritten:

"(b) Review. -- When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a), subsection (a) or (a1) of this section. In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a), subsection (a) or (a1) of this section, the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision."

Section 3. G.S. 150B-21.1(c) reads as rewritten:

"(c) Standing. -- A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) or (a1) of this section and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 11:20 a.m. on the 18th day of August, 1997.

S.B. 382

CHAPTER 404

AN ACT REDEFINING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS AND ELIMINATING THE ONE AND ONE-HALF TIMES TEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(17) reads as rewritten:

- "(17) a. Repealed by Session Laws 1977, c. 727, s. 33.
b. Repealed by Session Laws 1977, c. 727, s. 33.
c. As to claims filed on or after October 1, 1974, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the one-year period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least five hundred sixty-five dollars and fifty cents (\$565.50), and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one hundred and fifty dollars (\$150.00). As to claims filed on or after August 1, 1981, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the 52 week period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. Provided, however, if the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits is either (i) the first day of a calendar quarter, or (ii) the second day of a calendar quarter followed by a February 29 within one year thereof, 'benefit year' shall mean the one-year period beginning with that first day of the week with respect to which the individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least six times the average weekly insured wage, obtained in accordance with G.S. 96-8(22) and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one and one-half times the average weekly insured wage, obtained in accordance with G.S.

~~96-8(22).~~ G.S. 96-8(22), and has been paid wages in at least two quarters of the individual's base period.

d. Repealed by Session Laws, 1981, c. 160, s. 11."

Section 2. G.S. 96-8(18) reads as rewritten:

"(18) 'Base period' means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subdivision, 'alternative base period' means the last four completed calendar quarters."

Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission shall report to the General Assembly by January 1, 2001, on the effect of this act on unemployment compensation claims. This act expires September 1, 2001.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 11:23 a.m. on the 18th day of August, 1997.

S.B. 60

CHAPTER 405

AN ACT TO CLARIFY THE RULES FOR MAKING LEFT TURNS ON VARIOUS ROADWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-153(b) reads as rewritten:

"(b) Left Turns. -- The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ that vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such ~~the~~ direction upon the roadway being entered. ~~Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.~~"

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 11:25 a.m. on the 18th day of August, 1997.

H.B. 1110

CHAPTER 406

AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-1 reads as rewritten:

"§ 89A-1. *Definitions.*

The following definitions apply in this Chapter:

- (a) (1) ~~'Board' shall mean the Board. -- The North Carolina Board of Landscape Architects, established by G.S. 89A-3. Architects.~~
- (b) (2) ~~'Landscape architect' shall mean a Landscape architect. -- A person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him or her to practice 'landscape architecture' and to use the title 'landscape architect' in North Carolina under the authority of this Chapter.~~
- (c) (3) ~~'Landscape architecture,' or the 'practice of landscape architecture' shall mean the Landscape architecture or the practice of landscape architecture. -- The preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public and private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare."~~

Section 2. G.S. 89A-2 reads as rewritten:

"§ 89A-2. Use Practice of landscape architecture or use of title 'landscape architect' without registration prohibited; use of seal.

(a) ~~On and after January 1, 1970, no~~ No person shall use the designation 'landscape architect,' 'landscape architecture,' or 'landscape architectural,' or advertise any title or description tending to convey the impression that he or she is a landscape architect or shall engage in the practice of landscape architecture unless such the person is registered or has obtained a temporary permit as a landscape architect in the manner hereinafter provided and shall thereafter comply thereafter complies with the provisions of this Chapter. Every holder of a certificate shall display it in a conspicuous place in his or her principal office, place of business or employment.

(a1) No firm, partnership, or corporation shall engage in the practice of landscape architecture unless the firm, partnership, or corporation registered with the Board and has paid the fee required by G.S. 89A-6. All landscape architecture performed by a firm, partnership, or corporation shall be under the direct supervision of an individual who is registered under this Chapter.

(b) Nothing in this Chapter shall be construed as authorizing (i) to authorize a landscape architect to engage in the practice of architecture, engineering engineering, or land surveying, nor (ii) to restrict from the practice of landscape architecture or otherwise affect the rights of any person licensed to practice architecture under Chapter 83A, or engineering or land surveying under Chapter 89C of the General Statutes; Statutes if the person does not use the title landscape architect, landscape architecture, or landscape architectural, or (iii) to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, or (iv) to restrict the planting, maintaining maintaining, or marketing of plants or

~~plant materials: Provided, however, that no individual shall use the title 'landscape architect' unless he has complied with the provisions of this Chapter, materials or the drafting of plans or specifications related to the location of plants on a site, (v) to require a certificate for the preparation, sale, or furnishing of plans, specifications and related data, or for the supervision of construction pursuant thereto, where the project involved is a single family residential site, or a residential, institutional, or commercial site of one acre or less, or the project involved is a site of more than one acre where only planting and mulching is required, or (vi) to prevent any individual from making plans or data for their own building site or for the supervision of construction pursuant thereto.~~

(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, number of certificate and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect ~~in lieu~~ instead of or as a substitute for the seal of an architect, ~~engineer~~ engineer, or land surveyor."

Section 3. G.S. 89A-3 reads as rewritten:

~~"§ 89A-3. North Carolina Board of Landscape Architects; appointments; powers, appointments.~~

(a) There is created the North Carolina Board of Landscape Architects, consisting of seven members appointed by the Governor for four-year staggered terms. Five members of the Board shall have been engaged in the practice of landscape architecture in North Carolina at least five years at the time of their respective appointments. Two members of the Board shall not be landscape architects and shall represent the interest of the public at large. Each member shall hold office until the appointment and qualification of his or her successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No member shall serve more than two complete consecutive terms.

~~The Governor shall appoint the two public members not later than July 1, 1979, to serve four-year terms.~~

The Board shall be subject to the provisions of Chapter 93B of the General Statutes.

(b) The Board shall elect annually from its members a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.

(b1) The members of the Board shall not be compensated. However, members shall be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.

~~(c) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction. The Board shall have the power to make such rules not inconsistent with law as may be necessary in the performance of its duties.~~

~~(d) The Board shall elect a secretary, who may or may not be a member of the Board, and who shall hold office at the pleasure of the Board. The members of the Board shall not be compensated except that the secretary shall receive such salary as is fixed by the Board. The members of the Board shall, however, be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter."~~

Section 4. Chapter 89A of the General Statutes is amended by adding a new section to read:

"§ 89A-3A. Board's powers and duties.

The Board shall have the following powers and duties:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt rules to administer and enforce the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.
- (4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.
- (5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.
- (6) Establish and approve continuing education requirements for persons registered under this Chapter.
- (7) Receive and investigate complaints from members of the public.
- (8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.
- (9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.
- (10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.
- (11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.
- (12) Adopt and publish a code of professional conduct for all registrants.
- (13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board."

Section 5. G.S. 89A-4 reads as rewritten:

"§ 89A-4. Application, examination, certificate.

(a) Any person hereafter desiring to be registered and licensed to use the title 'landscape architect' and to practice landscape architecture in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his or her qualifications as may be prescribed by rules and regulations of the Board. Minimum qualifications under such rules shall require that the applicant

- (1) Shall be at least 18 years of age and age.
- (2) Shall be of good moral character; and that the applicant shall character.
- (3) Shall be a graduate of an a Landscape Architect's Accreditation Board (LAAB) accredited collegiate curriculum in landscape architecture as approved by the Board and Board.
- (4) Shall have at least one year's experience; four years' experience in landscape architecture.

(a) in lieu of such graduation and experience Notwithstanding the requirements of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of seven 10 years of education and experience in landscape architecture, in any combination deemed suitable by the Board, may make application to the Board for examination.

(b) If said the application is satisfactory to the Board, and is accompanied by the fees required by this Chapter, then the applicant shall be entitled to an examination to determine his or her qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title 'landscape architect' and to practice landscape architecture in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope of the examination. The Board may adopt rules for administering the examination in one or more parts at the same time or at different times.

(c) The Board, within its discretion, may issue temporary permits pending examinations, or without examination may grant licenses, licenses without examination and licenses by reciprocity, reciprocity or comity to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state or country whose registration requirements are deemed to be equal or equivalent to those of this State.

(d) Provided that his application and application fee be received by the Board prior to the first day of July, 1971, any applicant who presents evidence satisfactory to the Board that he was actively engaged in the practice of landscape architecture as herein defined, on or before July 1, 1968, shall be issued a certificate without the requirement for examination.

(e) The Board, within its discretion, may grant an honorific title license to persons who have held for a minimum of 20 years a license or certificate in landscape architecture issued by the Board or a legally constituted board of examiners in another state or country whose registration requirements are equal or equivalent to those of this State. The honorific title license shall allow the person to use the title 'landscape architect emeritus', but the person shall not practice landscape architecture or provide expert testimony as a landscape architect in this State unless the person complies with the provisions of this Chapter. There shall be no fee charged for an honorific title license."

Section 6. G.S. 89A-5 reads as rewritten:

"§ 89A-5. *Annual renewal of certificate.*

Every registrant under this Chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required fee; and upon fee. Upon failure to

renew, ~~his~~ the certificate shall be automatically ~~revoked~~; but such ~~revoked~~. The certificate may be renewed at any time within one year ~~upon payment of the prescribed renewal fee and penalty for late renewal, as provided by this Chapter, upon evidence satisfactory to the Board after its expiration if the applicant pays the required renewal fee and late renewal penalty, and the Board finds that the applicant has not used his or her certificate or title or engaged in the practice of landscape architecture after notice of revocation and is otherwise eligible for registration under the provisions of this Chapter. When necessary to protect the public health, safety, or welfare, the Board shall require such evidence as it deems necessary to establish the continuing competency of licensees as a condition of license renewal."~~

Section 7. G.S. 89A-6 reads as rewritten:

"§ 89A-6. Fees.

Fees are to be determined by the Board, but shall not exceed the amounts specified herein, however; fees must reflect actual expenses of the Board.

Application	\$100.00
Examination	450.00
License by reciprocity <u>or comity</u>	250.00
Annual license renewal.....	100.00
Late renewal penalty.....	50.00
Reissue of certificate.....	25.00
Temporary permit	150.00
Corporate certificate	250.00

Fees shall be paid to the Board at the times specified by the Board."

Section 8. G.S. 89A-7 reads as rewritten:

"§ 89A-7. ~~Refusal, revocation or suspension of certificate.~~ Disciplinary actions.

~~The Board may, in accordance with the provisions of Chapter 150B of the General Statutes: (i) deny permission to take an examination duly applied for; (ii) deny license after examination for any cause other than failure to pass; (iii) withhold renewal of a license for cause; and (iv) suspend or revoke a license. Grounds for such action or actions shall be dishonest practice, unprofessional conduct, incompetence, conviction of a felony or addiction to habits of such character as to render him unfit to continue professional practice. The procedure for all such actions shall be in accordance with the provisions of Chapter 150B of the General Statutes.~~

(a) The Board may deny or refuse to renew a certificate of registration, suspend, or revoke a certificate of registration if the registrant or applicant:

- (1) Obtains a certificate of registration by fraudulent misrepresentation.
- (2) Uses or attempts to use another's certificate of registration to practice landscape architecture.
- (3) Uses or attempts to use another's name for purposes of obtaining a certificate of registration or practicing landscape architecture.
- (4) Has demonstrated gross malpractice or gross incompetency as determined by the Board.
- (5) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice

landscape architecture or that indicates the person has deceived or defrauded the public.

- (6) Has been declared mentally incompetent by a court of competent jurisdiction.
- (7) Has willfully violated any of the provisions of this Chapter or the Board's rules.

(b) The Board may require a registrant to take a written or oral examination if the Board finds evidence that the person is not competent to practice landscape architecture as defined in this Chapter.

(c) The Board may take any of the actions authorized in subsection (a) of this section against any firm, partnership, or corporation registered with the Board.

(d) In addition to taking any of the actions authorized in subsection (a) of this section, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist."

Section 9. G.S. 89A-8 reads as rewritten:

"§ 89A-8. Violation a misdemeanor; injunction to prevent violation.

(a) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to use, or to hold himself or herself out as entitled to practice under, under the title of landscape architect or landscape architecture or to practice landscape architecture unless he or she is duly registered under the provisions of this Chapter.

(b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this Chapter."

Section 10. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-4.2G. Employment of attorney for the North Carolina Board of Landscape Architects.

The Attorney General shall assign an attorney on the Attorney General's staff to serve as advisor to the North Carolina Board of Landscape Architects. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The attorney shall also perform additional duties that may be assigned by the Attorney General."

Section 11. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

Became law upon approval of the Governor at 12:00 p.m. on the 18th day of August, 1997.

H.B. 761

CHAPTER 407

AN ACT PERTAINING TO LOCAL LAWS IN ORANGE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-413 reads as rewritten:

"§ 160A-413. Joint inspection department; other arrangements.

A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county, or may contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 160A-411.1 or ~~G.S. 153A-351.1~~ G.S. 153A-351.1, or may contract with the employer of an individual who holds one of the applicable certificates for the services of that individual. The inspector, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered a municipal employee. The city shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the city as it does for an individual who is an employee of the city. The individual with whom the city contracts shall have errors and omissions and other insurance coverage acceptable to the city.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g)."

Section 2. Notwithstanding G.S. 115C-517, the Chapel Hill/Carrboro School Administrative Unit may construct a school on land that is located, in part, outside of the boundaries of the local school administrative unit.

Section 2.1. Section 9-3 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

"Section 9-3. Zoning Board of Adjustment. The board of aldermen may create a board of adjustment in accordance with the provisions of Article 19 of Chapter 160A of the General Statutes. Such board shall be subject to all the provisions of general law except that the board of aldermen may authorize the board of adjustment to decide any matter before it either (i) upon a vote of a majority of the members present at a meeting and not excused from voting, so long as a quorum ~~consisting of at least six members~~

is present, or (ii) upon a vote of a four-fifths majority of the members present at a meeting and not excused from voting, so long as a quorum ~~consisting of at least six members~~ is present."

Section 2.2. Section 9-5 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

"Section 9-5. **Sprinkler Systems.** Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, the board of aldermen may adopt an ordinance requiring that sprinkler systems be installed in all of the following types of buildings constructed within the town or its extraterritorial planning ~~jurisdiction;~~ jurisdiction, including the portion of the joint planning area authorized under Chapter 233 of the 1987 Session Laws wherein the Town of Carrboro administers the State Building Code: (i) buildings in excess of 50 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of floor surface area; ~~or~~ (iii) buildings designed for assembly occupancy (as defined in the North Carolina State Building Code) that accommodate more than 25 ~~people.~~ people; or (iv) multifamily buildings having three or more dwelling units. ~~This ordinance applies~~ An ordinance adopted pursuant to this section may apply to existing buildings only to the extent and under the circumstances that the provisions of the North Carolina State Building Code apply to preexisting buildings."

Section 3. Section 1 of this act applies to the Town of Hillsborough only. Section 2 of this act applies to the Chapel Hill/Carrboro School Administrative Unit only.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of August, 1997.

Became law on the date it was ratified.

H.B. 631

CHAPTER 408

AN ACT TO MODIFY THE FORMULA FOR DISTRIBUTING THE PROCEEDS OF THE FORSYTH COUNTY OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 28 of Chapter 908 of the 1983 Session Laws, as amended, reads as rewritten:

"Sec. 28. Disposition of ~~Taxes Collected.~~ Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County shall remit the net proceeds of the occupancy ~~tax~~ taxes levied under Sections 24, 25, and 30.1 of this Part on a quarterly basis as follows: ~~(i) five~~

(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis; and (ii) the basis.

(2) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, has the meaning provided in Section 30.2(d) of this Part.

(b) A municipality may expend funds distributed to it pursuant to subsection (a) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) to further the development of travel, tourism, and conventions within Forsyth County. The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses."

Section 2. Section 30.2 of Part VII of Chapter 908 of the 1983 Session Laws, as enacted by Chapter 870 of the 1989 Session Laws, reads as rewritten:

"Sec. 30.2. Additional Tax. (a) Levy. -- In addition to the taxes authorized by Sections 24, 25, and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections 24, 25, and 30.1 of this Part.

(b) Distribution. -- The net proceeds of the tax levied under this section shall be distributed as follows:

- (1) (i) ~~five~~ Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis; and (ii) the basis.
- (2) After subtracting the amount provided in subdivision (1) of this subsection, one-third of the remaining net proceeds shall be divided among Forsyth County, the City of Winston-Salem, and remitted to the Forsyth County Tourism Development Authority on a pro rata basis. Authority.
- (3) After subtracting the amounts provided in subdivisions (1) and (2) of this subsection, ten percent (10%) of the remaining net proceeds shall be divided among those municipalities in Forsyth County, other than Winston-Salem, in which taxable establishments are located, in proportion to the amount of tax proceeds collected in each municipality.
- (4) After subtracting the amounts provided in subdivisions (1), (2), and (3) of this subsection, the remaining net proceeds shall be divided between Forsyth County and the City of Winston-Salem on a pro rata basis.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

(c) Use. -- A municipality that receives funds pursuant to subdivision (b)(3) of this section shall use at least two-thirds of all funds it receives pursuant to this Part to promote travel and tourism in the municipality and shall use the remainder for tourism-related expenditures. The municipality may use no more than ten percent (10%) of the funds it receives pursuant to this Part for its administrative expenses, including salaries and benefits.

Forsyth County or a municipality that does not receive funds pursuant to subdivision (b)(3) of this section may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part.

(d) Definitions. -- The following definitions apply in this section:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the entity making the expenditure, are designed to increase the use of lodging and meeting and convention facilities in the area by attracting tourists or business travelers to the area; the term includes tourism-related capital expenditures."

Section 3. This act becomes effective August 1, 1998, and applies to taxes levied on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law on the date it was ratified.

H.B. 99

CHAPTER 409

AN ACT TO ALLOW BURKE AND CAMDEN COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1, as amended by S.L. 1997-24, S.L. 1997-162, S.L. 1997-190, and S.L. 1997-236, reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) **Acquisition by County.** -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) **Construction or Improvement by County.** -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of

education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) **Lease or Sale by Board of Education.** -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) **Board of Education May Contract for Construction.** -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) **Scope.** -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law on the date it was ratified.

H.B. 418

CHAPTER 410

AN ACT TO AUTHORIZE SCOTLAND COUNTY AND THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. **Mount Airy Occupancy Tax.** (a) **Authorization and scope.** The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to

accommodations furnished by nonprofit charitable, educational, or religious organizations or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection only to promote travel and tourism in the Mount Airy area. The following definitions apply in this section:

- (1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.
- (2) Promote travel and tourism. -- Advertise and market activities, develop and distribute promotional materials, conduct market research, and engage in other similar promotional activities that attract tourists or business travelers to the area. The term also includes administration of the Mount Airy Tourism Development Authority.

Section 2. Mount Airy Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall appoint the following eight members to the Authority:

- (1) Two individuals who are owners or operators of taxable tourist accommodations in the city.
- (2) Two residents of the city who have experience in the promotion of travel and tourism.
- (3) Two residents of the city who are members of the Mount Airy Chamber of Commerce, selected by the Mount Airy Chamber of Commerce.
- (4) One member of the board of commissioners.
- (5) The city finance officer, who shall serve as an ex officio, nonvoting member.

Members of the Authority shall serve without compensation and shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointment. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. An individual may serve as a member for no more than two consecutive terms. The members shall elect a chair from among the membership, who shall serve for three years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the Mount Airy area. In

performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of commissioners that city staff be employed for this advice and assistance. Any city staff employed upon a recommendation of the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by ratified House Bill 859 and ratified Senate Bill 585, 1997 General Assembly, applies to the City of Mount Airy.

Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the 1993 Session Laws reads as rewritten:

"Section 1. Avery County Occupancy tax.

(a) Authorization and Scope.

~~The Avery County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The occupancy tax rate payable on accommodations furnished within Avery County may not exceed six percent (6%).~~

(b) Collection. Administration.

~~A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.~~

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

(c) Administration.

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties.~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

~~(e) Distribution and Use of Tax Revenue.~~

~~Avery County shall use at least shall, on a quarterly basis, distribute the net proceeds of the occupancy tax as follows: two-thirds to the Avery Tourism Development Authority created pursuant to Section 1.1 of this act and one-third to the Avery County Chamber of Commerce. The Tourism Development Authority shall use at least one-half of the proceeds distributed to it to promote travel and tourism and shall use the remainder for tourism-related expenditures. The chamber of commerce shall use the proceeds distributed to it only to promote travel and tourism. two-thirds of the net proceeds of the occupancy tax revenue to promote travel and tourism in Avery County and shall spend the remainder on tourism-related expenditures. The chamber of commerce shall comply with the same requirements for reporting and for submitting an annual budget for approval by the county commissioners as are established for the Avery Tourism Development Authority in Section 1.1 of this act. The Tourism Development Authority and the chamber of commerce may not spend any of the proceeds distributed to them under this section except in accordance with a proposed budget and work plan approved by the board of county commissioners as provided in Section 1.1 of this act.~~

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract

tourists or business travelers to the county and expenditures incurred by the county in collecting the tax, county. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the board of commissioners, entity making the expenditure, will facilitate and support tourism.

(f) ~~Effective Date of Levy.~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

(g) ~~Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Avery County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and membership. The board of commissioners of Avery County shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have nine voting members appointed by the board of commissioners as follows:

- (1) Four individuals selected by the Avery County Lodging Association.
- (2) Two individuals selected by the Avery County Chamber of Commerce.
- (3) One member of the Avery County Board of Commissioners, to serve ex officio.
- (4) Two members of the public.

The resolution shall provide for four-year terms of office for the members other than the county commissioner, except that the initial terms of four members shall be set at three years to provide for staggered terms. The resolution shall also provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Avery County shall be the ex officio finance officer of the Authority and shall serve as an ex officio, nonvoting member of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The

Authority shall promote travel and tourism in the county and make tourism-related expenditures, as defined in Section 1 of this act.

(c) **Annual Budget.** On or before October 1, 1997, and by May 1 of each year thereafter, the Authority shall submit for approval by the board of commissioners a proposed budget and work plan for expenditure of the estimated tax revenues for the ensuing fiscal period. If the proposed budget is not approved, the Authority shall submit a revised proposed budget for approval. The Authority may not spend any of the proceeds distributed to it under Section 1 of this act except in accordance with a proposed budget and work plan approved by the board of county commissioners.

(d) **Reports.** The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, and Section 3 of ratified House Bill 859, 1997 General Assembly, is further amended by adding the phrase "Avery," in its proper alphabetical order and by deleting the phrase "and Randolph" and substituting the phrase "Randolph, and Scotland".

Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

- (1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.
- (2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

- (1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.
- (2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe County~~ Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 11. Scotland County occupancy tax. (a) Authorization and scope. The Scotland County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Scotland County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Scotland Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Scotland County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Section 12. Scotland Tourism Development Authority. (a) Appointment and membership. When the Scotland County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The Authority shall be composed of seven members, five of whom must be currently active in the promotion of travel and tourism in the county and two of whom must be owners or operators of hotels, motels, or other taxable accommodations in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Scotland County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 11 of this act for the purposes provided in Section 11 of this act. The Authority shall promote travel and tourism and make tourism-related expenditures.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 13. Sections 4, 5, and 6 of this act become effective September 1, 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act become effective October 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law on the date it was ratified.

S.B. 327

CHAPTER 411

AN ACT TO MAKE TECHNICAL CHANGES TO THE GENERAL STATUTES GOVERNING THE DEPARTMENT OF CULTURAL RESOURCES AND THE NORTH CAROLINA HISTORICAL COMMISSION.

Whereas, having relocated to a much improved facility capable of supporting expanded programs, the North Carolina Museum of History has become a separate Division of the Department of Cultural Resources; and

Whereas, portions of two of the General Statutes governing the Department of Cultural Resources and the North Carolina Historical Commission make direct or oblique reference to the North Carolina Museum of History as an organizational unit of the Division of Archives and History; and

Whereas, these and other changes in these General Statutes are needed to provide proper legal and procedural protection for the North Carolina Historical Commission and the Department of Cultural Resources, its Division of Archives and History, and its new Division of the North Carolina Museum of History; and

Whereas, the North Carolina Historical Commission has endorsed these technical corrections; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-62(1)i. reads as rewritten:

"i. To serve as a search committee to seek out, interview, and recommend to the Secretary of Cultural Resources one or more experienced and professionally trained historian(s) for either the position of Director of the Division of Archives and History or the position of the Director of the North Carolina Museum of History Division when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the ~~Director~~ Directors and the ~~Division;~~ Divisions; and".

Section 2. G.S. 143B-62(1)j. reads as rewritten:

"j. To assist and advise the Secretary of Cultural Resources and the Director of the Division of Archives and ~~History~~ History, and the Director of the North Carolina Museum of History Division in the development and implementation of plans and priorities for the State's historical programs."

Section 3. G.S. 143B-62(2)a. reads as rewritten:

"a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina ~~State Archives Division of Archives and History~~ or the North Carolina Museum of History; History Division;"

Section 4. G.S. 121-7 reads as rewritten:

"§ 121-7. *Historical museums.*

(a) The Department of Cultural Resources shall maintain and administer State historic attractions under the management of the Division of Archives and History and the North Carolina Museum of History Division for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history or specialized regional history museums may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on permanent loan any artifact owned by the State of North Carolina and in the custody of and curated by the Museum of History Division or Division of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited to the State treasury to the credit of either the Division of Archives and History Artifact Fund, Fund or the Museum of History Artifact Fund, as appropriate, and shall be used only for the purchase of other artifacts. No artifact curated by any agency of the Department of Cultural Resources may be pledged or mortgaged.

(b) Insofar as practicable, the ~~North Carolina Museum of History~~ Division of Archives and History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural importance and which are owned by or to be acquired by the State for use in the State Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building. When any such item or object has been entered in the accession records of the ~~Museum of~~ Division of Archives and History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the ~~Museum of~~ Division of Archives and History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be ~~showed~~ shown therein.

(c) Title to an artifact whose ownership is unknown or whose owner cannot be located passes to the ~~Division of Archives and History~~ Department of Cultural Resources if:

- (1) The artifact was placed on loan with the Division of Archives and History or the North Carolina Museum of History Division for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Division of Archives and History or the North Carolina Museum of History Division as a loan, gift, purchase, or other arrangement is unknown; and
- (2) The artifact has been a part of the inventory of the Division of Archives and History or the North Carolina Museum of History Division for more than five years; and
- (3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records to locate and inform the owner, his heirs or successors, that either the Division of Archives and History or the North Carolina Museum of History Division is holding the artifact and clarify the artifact's status with ~~the Division of Archives and History~~, that Division.

To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources shall mail, first class postage prepaid, a notice to the last known address of the owner of the artifact or the last known address of the owner's heirs or successors. The Department need not mail a notice, if after exercising due diligence to find a record within the Department of Cultural

Resources indicating the owner of the artifact and his latest address, that information is not available. If no claim is made within 90 days from the date that notice is mailed, the Department of Cultural Resources shall publish a notice in three papers of general circulation once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is submitted to the Department of Cultural Resources, the Department may determine that legal title to the artifact is vested in the Division of Archives and History. History or the North Carolina Museum of History Division.

(d) Any person claiming legal title to an artifact to which the North Carolina Division of Archives and History or the North Carolina Museum of History Division also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the ~~museum~~ Department originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Division of Archives and History or the North Carolina Museum of History Division and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of August, 1997.

Became law upon approval of the Governor at 8:37 a.m. on the 20th day of August, 1997.

S.B. 862

CHAPTER 412

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"§ 116-31.10. Powers of Board regarding certain purchasing contracts.

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars (\$250,000). The Board

shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars (\$500,000) or less:

- (1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
- (2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).
- (3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section."

Section 2. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless~~

~~of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection, and that tabulation shall become public record in accordance with the rules adopted by the Secretary.~~ All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

"(a) The Secretary of Administration may adopt rules governing the following:

- (1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.
- (2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid

value benchmark established under the provisions of G.S. ~~143-53.1~~, 143-53.1 or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

- (3) Defining contractual services for the purposes of G.S. ~~143-49(3)~~, 143-49(3) and G.S. 143-49(5).
- (4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.
- (5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.
- (6) Prescribing conditions under which partial, progressive and multiple awards may be made.
- (7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.
- (8) Providing conditions under which bids may be rejected in whole or in part.
- (9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.
- (10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.
- (11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.
- (12) Repealed by Session Laws 1987, c. 827, s. 216."

Section 4. G.S. 143-53.1 reads as rewritten:

"§ 143-53.1. *Setting of benchmarks; increase by Secretary.*

On and after July 1, 1990, 1997, the ~~expenditure benchmark procedures~~ prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. 143-53(2) 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars (\$10,000); no more than twenty-five thousand dollars (\$25,000);~~ provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, 1999, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars (\$35,000),~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-64.34 as amended by S.L. 1997-314 reads as rewritten:

"§ 143-64.34. *Exemption of certain State Capital Improvement Projects, projects.*

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than one hundred thousand dollars (\$100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars (\$300,000) is exempt from this Article if:

- (1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;
- (2) The open-end design agreement has been publicly announced; and
- (3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."

Section 5.1. Effective July 1, 2001, G.S. 143-64.34, as amended by Section 5 of this act, reads as rewritten:

"§ 143-64.34. *Exemption of certain projects.*

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars (\$100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of the University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars (\$300,000) is exempt from this Article if:

- (1) ~~The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;~~
- (2) ~~The open-end design agreement has been publicly announced; and~~

- ~~(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."~~

Section 6. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 1. All State buildings; and
 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 7. G.S. 143-135.3 reads as rewritten:

"§ 143-135.3. *Adjustment and resolution of State board construction contract claim.*

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation,

parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 8. G.S. 150B-1(f) reads as rewritten:

~~"(f) Exemption from All But Judicial Review, for The University of North Carolina. -- No Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina."~~

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. -- Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. G.S. 143-135.1 reads as rewritten:

"§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities."

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of ~~Administration~~, Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given ~~consideration by the Department of Administration~~, consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of ~~Administration~~, Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina."

Section 11. G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, ~~or on projects (ii) that are exempt from the State Building Code, Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution.~~"

Section 12. (a) The Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, and any other benefits or detriments regarding the delegation of authority under G.S. 116-31.11. The evaluation shall also include recommendations regarding the continuance of the delegated powers, continuance with modifications, expansion, or discontinuance. The Office of State Budget and Management and the State Building Commission shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

(b) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, as enacted in Section 1 of this act. The State Building Commission shall report to the General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Section 13. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation, the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 14. This section and Section 12(b) of this act are effective when they become law. Section 5.1 becomes effective July 1, 2001. The remainder of this act becomes effective January 1, 1998. Sections 6, 7, 8, 10, and 11 of this act and G.S. 116-31.11, as enacted by Section 1 of this act, expire July 1, 2001.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

Became law upon approval of the Governor at 8:32 a.m. on the 21st day of August, 1997.

H.B. 590

CHAPTER 413

AN ACT TO AMEND THE CHARTER OF THE TOWN OF WILSON'S MILLS TO DESCRIBE THE TOWN'S BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. Sec. 2.1 of the Charter of the Town of Wilson's Mills, being Chapter 12 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Wilson's Mills are as follows:

~~"Beginning at a point where the east R/W line of SR 1914 intersects the southern R/W of Hwy 70 bypass. Thence along the southern R/W of 70 bypass in a westerly direction to where it intersects with Kenneth R. Jones (Twin Creek S/D) thence in a southerly direction to the southeastern corner of Tax Parcel 17507015. Thence following along the southern line of Tax Parcel 17507015 to where it intersects the eastern right of way of Swift Creek Rd. thence along the eastern of Swift Creek Road in a southerly direction to where it intersects with the western line of Glenview Acres thence along the lines of Glenview Acres encompassing above said subdivision to the western R/W line of Swift Creek Rd. thence along said right of way in a northerly direction to where it intersects the southern R/W of Hwy 70 bypass, thence along the southern R/W of Hwy 70 bypass to where it meets the southwestern property corner of Tax Parcel 17507009A at a perpendicular angle thence along the western property line of Tax Parcel 17507009A to where it intersects Wilson Mills Rd's northern R/W. Thence along said R/W in a westerly direction to the western boundary of Tax Parcel 17J0602A thence along the western boundaries of Tax Parcels 17J06023A, 17K07005L, 17J06022A and 17J0621 to the northwest corner of 17J0621 thence along the northern and western lines of Tax Parcel 1750621 to where it intersects the southwesterly corner of Tax Parcel 17K07195I thence along the southern property line of Tax Parcel 17K071951 to where it joins Tax Parcel 17K0700SE. Thence along the western and northern line of Tax Parcel 17K0700SE to the eastern R/W of Powhattan Road thence along the eastern R/W of Powhattan Road to where it intersects the northern boundary of Tax Parcel 17K07004A thence with the northern and western line of Tax Parcel 17K07004A to the southeastern corner of Tax Parcel 17K07004A. Thence leaving said point traveling in a northeasterly direction to the northeastern point of Tax Parcel 17K07005A.~~

~~Thence along a meandering line encompassing Tax Parcels 17K07005B, 17K07195 and 17K08015M to the western R/W of Fire Dept Road thence along the western R/W line of Fire Dept Road to where it intersects the northern boundary of Tax Parcel 17K07013M. Thence along the northern boundary of said parcel to the south eastern corner of Tax Parcel 17K07013M thence along a meandering line encompassing Tax Parcels 17K0714, 17Q99030F, 17K07016A, 17K07016C, 17K07016F, 17K07016G, 17J06016, 17K07015F, 17K07017A, 17K08024 to the southern R/W of Jones Road thence along the southern right of way of said road to the northeastern corner of Tax Parcel 17K08026A thence along a meandering line encompassing Tax Parcels 17K08026A thence along a meandering line encompassing Tax Parcels 17K08026A, 17K08026L, 17K08027C, and 17K08026N to the northern right of way of North Carolina Railroad thence along said right of way in an easterly direction to where it intersects the eastern right of way of NCSR 1914 thence along said R/W in a southerly direction to the point and place of beginning.~~

Beginning at a point on the western right-of-way of US Highway 70 By-Pass and the intersection of State Road 1501, Swift Creek Road and continues along the right-of-way of US Highway 70 By-Pass in a northwesterly direction until reaching a point perpendicular to tax parcel 17J07009A; thence northeasterly crossing US Highway 70 By-Pass to a corner of tax parcel 17J07009A; thence along the western boundary of tax parcel 17J07009A in a northeasterly direction to a point on the southern right-of-way of State Road 1913, Wilson's Mills Road; thence continuing across State Road 1913, Wilson's Mills Road to a corner of tax parcel 17J06022K; thence northeasterly along the western boundary of tax parcel 17J06023A, encompassing tax parcel 17J06023A, until said line intersects corner of tax parcel 17J06022R; thence along the western boundary of tax parcels 17J06022R, 17J06022A until the line intersects with a point on the southern right-of-way of the Southern Railroad, continuing in a northeasterly direction across the right-of-way of said railroad, intersecting the corner of tax parcel 17J06022, continuing along the western boundary line of tax parcel 17J06022 until intersecting at the corner of tax parcel 17J06021; thence along the western boundary of tax parcel 17J06021 in a northerly direction to a corner; thence easterly along the boundary of tax parcel 17J06021 to a corner; thence south along the boundary of tax parcel 17J06021 to the intersection corner of tax parcel 17J06017A; thence along the western boundary of parcel 17J06017A to a corner of tax parcel 17J06020E; thence in an easterly direction along the northern boundary of tax parcels 17J06020E, 17J06020A to a corner of tax parcel 17K07005E; thence along the western boundary of tax parcel 17K07005E in a northerly direction, continuing along the northern boundary of tax parcel 17K07005E until intersecting at a point on the western right-of-way of State Road 1901, Powhatan Road; thence crossing State Road 1901, Powhatan Road to a corner of tax parcel 17K07004; thence in a southeasterly direction along the southern boundary of tax parcel 17K07004; thence continuing along the northern boundary of tax parcels 17K07004A, 17Q99001A, 17K07005D, 17K07005A, 17K07005B, 17K077195, 17K08015M until intersecting at a point on the right-of-way of Frazier Drive; thence along the northern right-

of-way of Frazier Drive until intersecting at a point of the western right-of-way of State Road 1908, Fire Department Road; thence along the western right-of-way of State Road 1908, Fire Department Road to a point perpendicular to the northern boundary of tax parcel 17K07013M; thence continuing across State Road 1908, Fire Department Road; thence along the northern boundary of tax parcel 17K07013M in a southeasterly direction to a corner, continuing southwesterly along tax parcel 17K07013M to a corner; thence southeasterly along the easternmost boundary of tax parcel 17K07014 to a corner; thence southwesterly along the southern boundary of tax parcels 17K07014, 17Q99030F to a corner; thence southerly along the eastern boundary of tax parcel 17K07016A to a corner; thence southeasterly along the northern boundary of tax parcel 17K07016C to a corner, continuing along the eastern boundary of tax parcel 17K07016F to a corner, continuing along the northern boundary of tax parcel 17K07016G, to a corner; thence northeasterly along the northern boundary of tax parcel 17J06016 to a corner; thence south along the eastern boundary of tax parcels 17J06016, 17K07017C, 17K07017D to a corner; thence southwesterly along the southern boundary of tax parcel 17K07017D to a corner; thence south along the eastern boundary of tax parcels 17K08025A, 17K08026A, 17K08026L, 17K08027C, 17K08026N to a point on the northern right-of-way of Norfolk Southern Railroad; thence along said right-of-way in a southeasterly direction along the southern boundary line of tax parcels 17K08026, 17K08028A to a corner on said right-of-way of State Road 1914, Bear Farm Road and State Road 1912, Uzzle's Pond Road; thence crossing right-of-way of Norfolk Southern Railroad in a southwesterly direction continuing along the westernmost boundary of tax parcels 17K08028A, 17K08047 to a point on the southern right-of-way of US Highway 70 By-Pass; thence along the southern right-of-way of US Highway 70 By-Pass in a northwesterly direction along the boundary and right-of-way of tax parcels 17K08048C, 17K08048E, 17K08048D, 17K08048G, 17K08048, 17K08043G, 17K08044, 17K08043M, 17K08043I, 17K08043K, 17K08043H, 17K08029, 17K08030A to a corner on said right-of-way; thence in a westerly direction along the southern boundary of tax parcel 17K08031E; thence along the eastern boundary of tax parcel 17K08005; thence along the southern boundary of tax parcels 17J07015, 17J07014A to a point on the southern right-of-way of Jones Court; thence southwesterly along the northern boundary of tax parcel 17J07016 to a point on the eastern right-of-way of State Road 1501, Swift Creek Road; thence southwesterly along the eastern right-of-way of State Road 1501, Swift Creek Road to a corner perpendicular to tax parcel 17J07018B; thence crossing the right-of-way of State Road 1501, Swift Creek Road to a corner, continuing northerly along the western boundary of tax parcels 17J07018B, 17J07018D, 17J07195, 17J07016A, 17J07019K, 17J07019J, 17J07019I, 17J07019H, 17J07019G, 17J07019F, 17J07019E, 17J07019D; thence along the northern boundary of tax parcels 17J07019C, 17J07019B, 17J07019A, 17J07018O, 17J07018P, 17J07018Q to a point on the northern right-of-way of State Road 1501, Swift Creek Road; thence in a northeasterly direction along the western right-of-way of State Road 1501,

Swift Creek Road to the point of beginning at a point on the southern right-of-way of US Highway 70 By-Pass and State Road 1501, Swift Creek Road."

Section 2. This act becomes effective August 2, 1996.

In the General Assembly read three times and ratified this the 21st day of August, 1997.

Became law on the date it was ratified.

H.B. 699

CHAPTER 414

AN ACT TO GRANT AUTHORITY TO THE CITY OF GREENVILLE AND THE TOWNS OF BETHEL, FARMVILLE, AND NEWPORT TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws, as amended by S.L. 1997-101, reads as rewritten:

"Sec. 2. This act applies to the Cities of Greenville, Lumberton, Lumberton, and Roanoke Rapids and the Towns of Bethel, Farmville, and Newport only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of August, 1997.

Became law on the date it was ratified.

H.B. 836

CHAPTER 415

AN ACT TO CREATE THE NEW HANOVER INTERNATIONAL AIRPORT ECONOMIC DEVELOPMENT ZONE.

The General Assembly of North Carolina enacts:

Section 1. No municipality may annex any of the area currently part of, or the area which is described in the Airport Development Plan (1995-2015) for expansion of the New Hanover International Airport, pursuant to Article 4A of Chapter 160A of the General Statutes, or pursuant to any other provision of law, as long as the described property is owned by a governmental entity, without the approval of the governing board of the New Hanover International Airport.

Section 2. The boundary of the area described in Section 1 of this act shall be considered "municipal boundary" of the City of Wilmington for the purposes of Part 3 of Article 4A of Chapter 160A of the General Statutes with respect to future annexations by the City of Wilmington.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of August, 1997.

Became law on the date it was ratified.

H.B. 637

CHAPTER 416

AN ACT TO PROVIDE STAGGERED TERMS FOR THE TOWN OF BROADWAY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of the Charter of the Town of Broadway, being Chapter 548 of the Session Laws of 1947 as amended by Chapter 789 of the Session Laws of 1949, reads as rewritten:

"Sec. 3. At the time of the holding of the next general election following ratification of this Act, and ~~biennially~~ thereafter, there shall be elected in the Town of Broadway in accordance with the provisions of Article 3 of Chapter 160 of the General Statutes of North Carolina, as amended, the following officers: ~~A mayor, five town commissioners, and a town constable.~~ A mayor and five town commissioners. The mayor shall be elected for a four-year term. In 1997, the three persons receiving the highest numbers of votes for town commissioner are elected to four-year terms, and the two persons receiving the next highest numbers of votes for town commissioner are elected to two-year terms. In 1999 and quadrennially thereafter, two town commissioners are elected to four-year terms. In 2001 and quadrennially thereafter, three town commissioners are elected to four-year terms. The mayor and the five town commissioners so elected shall constitute the governing body of the Town of Broadway, and such governing body may appoint such other officers and employ such assistants as the governing body of the town may deem necessary for the better governance of the town."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of August, 1997.

Became law on the date it was ratified.

H.B. 1231

CHAPTER 417

AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR LOCAL GOVERNMENT TRANSIT FINANCING.

The General Assembly of North Carolina enacts:

PART I. MECKLENBURG COUNTY SALES TAX

Section 1. (a) This section applies only to Mecklenburg County.

(b) Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43.

"Local Government Sales and Use Taxes for Public Transportation.

"§ 105-505. Short title; purpose.

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides counties with authority to levy one-half percent (1/2%) sales and use taxes.

"§ 105-506. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Net proceeds. -- Gross proceeds less the cost of administering and collecting the tax.
- (2) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

"§ 105-507. Limitations.

A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this Article unless it has developed a financial plan and distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county.

"§ 105-508. Local election on adoption of sales and use tax.

(a) Resolution. -- The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Article. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. -- The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[] FOR [] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current two percent (2%) local sales and use taxes, to be used only for public transportation systems.'

"§ 105-509. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in

addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of the General Statutes'.

A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"§ 105-510. Distribution and use of taxes.

(a) Distribution. -- The Secretary shall, on a quarterly basis, allocate to each taxing county the net proceeds of the tax levied under this Article by that county. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the quarterly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. -- A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

PART II. MUNICIPAL VEHICLE REGISTRATION TAX

Section 2. G.S. 20-97 reads as rewritten:

"§ 20-97. Taxes ~~compensatory; no additional tax.~~ credited to Highway Fund; municipal vehicle taxes.

(a) ~~State Taxes to Highway Fund.~~ -- All taxes levied under the provisions of this Article are ~~intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to State.~~ The taxes collected shall be credited by him ~~to the State Highway Fund; and no~~ to the State Highway Fund. Except as provided in this section, no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, ~~except that cities State.~~

(b) General Municipal Vehicle Tax. -- Cities and towns may levy a tax of not more than five dollars (\$5.00) per year upon any vehicle resident

~~therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed in the city or town. The proceeds of the tax may be used for any lawful purpose.~~

(c) Municipal Vehicle Tax for Public Transportation. -- A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars (\$5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars (\$30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply to the City of Durham or to the cities and towns in Gaston County.

(d) Municipal Taxi Tax. -- Cities and towns may levy a tax of not more than fifteen dollars (\$15.00) per year upon each vehicle operated in such the city or town as a taxicab. The proceeds of the tax may be used for any lawful purpose.

(a1) to (a5). Repealed by Session Laws 1983, c. 188, s. 2.

(b) (e) No Additional Local Tax. -- No additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this Article nor shall any county, city or town may impose a franchise tax, license tax, or other fee upon them, except that cities and towns may levy a license tax not in excess of fifteen dollars (\$15.00) per year on each vehicle operated in such city as a taxicab as provided in subsection (a) hereof. a motor carrier unless the tax is authorized by this section.

(c) Repealed by Session Laws 1993, c. 321, s. 146."

PART III. REGIONAL TRANSIT AUTHORITY VEHICLE RENTAL TAX

Section 3. Chapter 105 of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER IX. MULTICOUNTY TAXES.

"ARTICLE 50.

"Regional Transit Authority Vehicle Rental Tax.

"§ 105-550. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.
- (2) Long-term lease or rental. -- Defined in G.S. 105-187.1.
- (3) Motorcycle. -- Defined in G.S. 20-4.01.
- (4) Private passenger vehicle. -- Defined in G.S. 20-4.01.
- (5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation.

The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

- (6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

"§ 105-551. Tax on gross receipts authorized.

(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting private passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this section or increase the tax rate of a tax levied under this section until all of the following requirements have been met:

- (1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.
- (2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.
- (3) The board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

"§ 105-552. Collection and administration of gross receipts tax.

(a) Effective Date. -- A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the second month after the board of trustees adopts the resolution.

(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a private passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the private passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the

vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the private passenger vehicle or motorcycle had elected to pay the optional gross receipts tax.

(c) Penalties and Remedies. -- The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of this Chapter apply to a tax levied under this Article. The board of trustees of an Authority may exercise any power the Secretary of Revenue or a board of county commissioners may exercise in collecting local sales and use taxes.

"§ 105-553. Exemptions and refunds.

No exemptions are allowed from a tax levied under this Article. No refunds are allowed for a tax lawfully levied under this Article.

"§ 105-554. Use of tax proceeds.

An Authority that levies a tax under this Article may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. An Authority shall use the tax proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. Authorized purposes for which an Authority may use funds include the following:

- (1) Pledging funds in connection with the financing of a public transportation system or any part of a public transportation system.
- (2) Paying a note, bond, or other obligation entered into by the Authority pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

"§ 105-555. Repeal of tax or decrease in tax rate.

The board of trustees of an Authority may repeal a tax levied under this Article or decrease the tax rate of a tax levied under this Article. The same restrictions that apply to the levy of a tax or an increase in a tax rate under this Article apply to the repeal of the tax or a decrease in the tax rate.

A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the second month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease."

PART IV. REGIONAL TRANSPORTATION AUTHORITY REGISTRATION TAX

Section 4. Subchapter IX of Chapter 105 of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

"ARTICLE 51.

"Regional Transit Authority Registration Tax.

"§ 105-560. Definitions.

- (1) Authority. -- Any of the following:

- a. A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes that includes two or more counties.

b. A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

c. A regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

(2) Board of trustees. -- The governing body of an Authority.

(3) Public transportation system. -- Defined in G.S. 105-550.

"§ 105-561. Authority registration tax authorized.

(a) Tax Authorized. -- The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed five dollars (\$5.00) a year.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this Article or increase the tax rate until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.

(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(3) Except where the levy or increase in tax is necessary for debt service on bonds or notes that each of the boards of county commissioners had previously approved under G.S. 159-51, the board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Resolutions. -- The board of trustees and the board of county commissioners, upon adoption of a resolution pursuant to this section, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles.

"§ 105-562. Collection and scope.

(a) Collection. -- A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the third calendar month after the board of trustees adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a county the entire area of which is within the jurisdiction of the Authority, the Division of Motor Vehicles shall collect and administer the tax. To the extent the tax applies to vehicles whose tax situs is in a county that is only partially within the jurisdiction of the county, the Authority shall collect and administer the tax. The Authority may contract with one or more local governments in its jurisdiction to collect the tax on its behalf.

Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles shall proceed to collect and administer the tax as provided in this Article. The tax is due at the same time and subject to the same

restrictions as in G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to carry out its responsibilities under this Article.

(b) Scope. -- Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this Article. Taxes shall be prorated in accordance with G.S. 20-95.

(c) Tax Situs. -- The tax situs of a motor vehicle for the purpose of this Article is its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for the purpose of this Article is the ad valorem tax situs it would have if it were not exempt from ad valorem tax.

"§ 105-563. Modification or repeal of tax.

The Board of Trustees may, by resolution, repeal the levy of the tax under this Article or decrease the amount of the tax, under the same procedures and subject to the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the third calendar month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease.

"§ 105-564. Distribution and use of proceeds.

The Authority shall retain the net proceeds of taxes it collects under this Article. Taxes collected by the Division of Motor Vehicles under this Article shall be credited to a special fund and the net proceeds disbursed quarterly to the appropriate Authority. Interest credited to the fund shall be disbursed quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.

An Authority that levies a tax under this Article may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. An Authority shall use the tax proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

Section 5. G.S. 160A-623 reads as rewritten:

"§ 160A-623. Regional Transportation Authority registration tax.

(a) Tax Authorized. In accordance with this section, Article 51 of Chapter 105 of the General Statutes, an Authority organized under this Article may levy an annual license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as defined by G.S. 160A-602. A tax levied under this section before the enactment of Article 51 of Chapter 105 of the General Statutes is considered a tax levied under Article 51 of Chapter 105 of the General Statutes.

(b) Purpose. ~~The purpose of the tax levied under this section is to raise revenue for capital and operating expenses of an Authority in providing a public transportation system.~~

(c) Amount of Tax. ~~The annual levy under this section must be a full dollar amount, but may not exceed five dollars (\$5.00) per year.~~

(d) Procedure for Levy. ~~The Board of Trustees of an Authority may levy the tax provided by this section by passage of a resolution, after not less than~~

~~10 days' public notice and after a public hearing. Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Board of Trustees in the resolution levying the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. The Board of Trustees, upon adoption of the resolution, shall cause a certified copy of the resolution to be delivered immediately to the Division of Motor Vehicles.~~

~~(e) Collection of Tax. Upon receipt of the resolutions under subsections (d) and (j), the Division of Motor Vehicles shall proceed to collect and administer the tax. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87 (1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Commissioner of Motor Vehicles may adopt such rules as are necessary and proper to implement this section.~~

~~(f) Modification or Repeal of Tax. The Board of Trustees may, by resolution, terminate the levy of the tax under this section, or increase or decrease the amount of the tax, under the same procedures as provided in subsection (d) of this section, and subject to the limitations provided in subsections (c) and (j) of this section. Collection of the increased or decreased tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Board of Trustees in the resolution increasing or reducing the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. The effective date of the termination of the tax shall be only on and after the first day of a calendar month set by the Board of Trustees in the resolution terminating the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. No liability for any tax levied under this section which shall have attached prior to the effective date on which a levy is terminated or reduced shall be discharged as a result of such termination or reduction, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which a levy is terminated or reduced shall be denied as a result of such termination.~~

~~(g) Vehicles Subject to Tax. Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this section. Taxes shall be prorated in accordance with G.S. 20-95.~~

~~(h) Tax Situs. The tax situs of a motor vehicle for the purpose of this section is its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it would have if it were not exempt from ad valorem tax.~~

~~(i) Distribution of Proceeds. Taxes paid under this section shall be credited to a special fund, and the net proceeds disbursed quarterly to the appropriate Authority. Interest credited to the fund shall be disbursed quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.~~

~~(i1) Repealed by Session Laws 1993, c. 382, s. 1.~~

~~(j) When Special Tax Board and Board of County Commissioners Authorization Necessary. No Authority may adopt a resolution to levy any tax under this section, or to increase the amount of the levy, unless the~~

~~special tax board of that Authority and the board of county commissioners of each county organizing the Authority have first passed a resolution approving the levy or increase, except where the levy or increase in tax is necessary for debt service on bonds or notes that special tax board and each of the boards of county commissioners had previously approved under G.S. 159-51. The Special Tax Board and Board of County Commissioners, upon adoption of the resolution, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles."~~

PART V. EFFECTIVE DATES

Section 6. This act is effective when it becomes law.

Section 7. A tax levied under Article 43 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 43 of Chapter 105 of the General Statutes.

In the General Assembly read three times and ratified this the 18th day of August, 1997.

Became law upon approval of the Governor at 1:28 p.m. on the 21st day of August, 1997.

S.B. 490

CHAPTER 418

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW ON THE SENTENCING COMMISSION, FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES, LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS, AND BEAVER DAMAGE CONTROL FUNDS.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256, as rewritten by Section 1 of S.L. 1997-347 and Section 1 of S.L. 1997-401, reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 22, 1997, August 29, 1997, these funds shall revert to the appropriate fund on that date."

EXTEND SENTENCING COMMISSION

Section 2. Section 8 of Chapter 1076 of the 1989 Session Laws, as amended by Chapters 812 and 816 of the 1991 Session Laws, Chapters 253, 321, and 591 of the 1993 Session Laws, Chapter 236 of the 1995 Session Laws, Section 6 of S.L. 1997-256, Section 2 of S.L. 1997-347, and Section 2 of S.L. 1997-401, reads as rewritten:

"Sec. 6. This act is effective upon ratification, and shall expire ~~August 22, 1997~~, August 29, 1997."

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Section 3. Section 23(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 8 of S.L. 1997-256, Section 4 of S.L. 1997-347, and Section 4 of S.L. 1997-401, reads as rewritten:

"(c) Subsection (a) of this section expires ~~August 22, 1997~~, August 29, 1997."

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Section 4. Section 27.8(a) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, as rewritten by Section 9 of S.L. 1997-256, Section 5 of S.L. 1997-347, and Section 5 of S.L. 1997-401, reads as rewritten:

"(a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by ~~August 22, 1997~~, August 29, 1997, then the funds shall revert to the General Fund."

BEAVER DAMAGE CONTROL FUNDS

Section 5. Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15(c) of Chapter 18 of the Session Laws of the 1996 Second Extra Session, Section 10 of S.L. 1997-256, Section 6 of S.L. 1997-347, and Section 6 of S.L. 1997-401, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire ~~August 22, 1997~~, August 29, 1997."

CHANGES IN THE EXECUTION OF THE BUDGET

Section 6. Section 11 of S.L. 1997-256, as rewritten by Section 7 of S.L. 1997-347 and Section 7 of S.L. 1997-401, reads as rewritten:

"Section 11. The amendments to G.S. 143-27 that were enacted in Section 7.4(h)(2) of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall become effective ~~August 22, 1997.~~ August 29, 1997."

EFFECTIVE DATE

Section 7. (a) Section 13 of S.L. 1997-256, as rewritten by Section 9 of S.L. 1997-347 and Section 10 of S.L. 1997-401, reads as rewritten:

"Section 13. This act becomes effective July 1, 1997, except that Sections 5 through 10 of this act become effective June 30, 1997. This act expires ~~August 22, 1997.~~ August 29, 1997."

(b) Except as otherwise provided, this act becomes effective August 22, 1997.

In the General Assembly read three times and ratified this the 21st day of August, 1997.

Became law upon approval of the Governor at 2:15 p.m. on the 21st day of August, 1997.

S.B. 439

CHAPTER 419

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

Section 1. G.S. 78A-2(2)d.1. reads as rewritten:

- "1. The security is exempted under subdivisions (1), (2), (3), (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16, or the security is a security covered under federal law, or the transaction is exempted under G.S. 78A-17, and such exemption has not been denied or revoked under G.S. 78A-18, or the transaction is in a security covered under federal law, and such exemption has not been denied or revoked under G.S. 78A-18, or".

Section 2. G.S. 78A-2(2) is amended by adding a new subdivision to read:

- "g. An individual who represents an issuer in effecting transactions in a security described in sub-subdivision (2)d. of this section or a security covered under federal law, provided no commission or other special remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State."

Section 3. G.S. 78A-2(9) reads as rewritten:

- "(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)(2)). A

partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if he that person otherwise comes within this definition."

Section 4. G.S. 78A-2 is amended by adding a new subdivision to read:

"(11a) 'Security covered under federal law' means any security that is a covered security under section 18(b) of the Securities Act of 1933 (15 U.S.C. § 77r(b)) or rules or regulations adopted under that section."

Section 5. G.S. 78A-17(16) reads as rewritten:

"(16) Any offer to purchase or to sell or any sale or issuance of a security security, other than a security covered under federal law, pursuant to a plan approved by the Administrator after a hearing conducted pursuant to the provisions of G.S. 78A-30 of this Chapter. G.S. 78A-30."

Section 6. The title to Article 4 of Chapter 78A reads as rewritten:
"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

Section 7. G.S. 78A-24 reads as rewritten:

"§ 78A-24. *Registration requirement.*

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this ~~Chapter or Chapter~~, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

Section 8. G.S. 78A-30(d) reads as rewritten:

"(d) The Administrator's authority under this section shall extend to the issuance or the delivery of securities or the delivery of other consideration:

- (1) By any corporation organized under the laws of this State; or
- (2) In any transaction which is subject to the registration or qualification requirements of this Chapter or which would be so subject except for the availability of an exemption under G.S. 78A-16 or ~~78A-17 or by reason of G.S. 78A-2(8)(f).~~ G.S. 78A-17, by reason of G.S. 78A-2(8)f., or by reason that the security is a security covered under federal law."

Section 9. Article 4 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"§ 78A-31. *Notice filings for securities covered under federal law.*

(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

- (1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at

which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars (\$25.00) or more than one thousand six hundred dollars (\$1,600).

- (2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.
- (3) A report of the value of securities covered under federal law that are offered or sold in this State.
- (4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars (\$100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.
- (5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a fee calculated in the manner specified in subdivision (1) of this subsection and a filing fee of fifty dollars (\$50.00) with respect to the additional securities proposed to be offered.

(b) With regard to any security that is covered under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars (\$150.00).

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under section 18(b)(3) or (4) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(3) or (4)). The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars (\$150.00).

(d) The Administrator may suspend the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(1)), if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section."

Section 10. G.S. 78A-38 reads as rewritten:

"§ 78A-38. *Post-registration provisions.*

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule ~~prescribes~~, prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o). All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes~~, prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o).

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under G.S. 78A-36(b).

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 11. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18~~, G.S. 78A-18 or the security is a security covered under federal law or the transaction is with respect to a security covered under federal law."

Section 12. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

Section 13. G.S. 78A-63(f) reads as rewritten:

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed,

with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

II. Investment Advisers

Section 14. G.S. 78C-2 reads as rewritten:

"§ 78C-2. Definitions.

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

- (1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:
 - a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;
 - b. A bank, savings institution, or trust company;
 - c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;
 - d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;
 - e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;
 - f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940

provided the business development company is not an 'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

- g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;
 - h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;
 - i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;
 - j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;
 - k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;
 - l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;
 - m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.
 - ~~m.~~ n. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.
- (2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.
- (3) 'Investment adviser representative' ~~means~~ means, with respect to any investment adviser registered under this Chapter, any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

- a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,
- b. Manages accounts or portfolios of clients,
- c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3)c.,
- d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or
- e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

With respect to any person that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3), 'investment adviser representative' means any person who is defined as an 'investment adviser representative' pursuant to rules or regulations adopted or promulgated by the Securities Exchange Commission pursuant to the Investment Advisers Act of 1940, and who has a place of business located in the State.

- (4) 'Investment adviser covered under federal law' means any adviser who is registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3).'

Section 15. The title to Article 3 of Chapter 78C reads as rewritten:
"ARTICLE 3.

"Registration and Notice Filing Procedures of Investment Advisers and Investment Adviser Representatives."

Section 16. G.S. 78C-16 reads as rewritten:

"§ 78C-16. *Registration and notice filing requirement.*

(a) It is unlawful for any person to transact business in this State as an investment adviser ~~or as an investment adviser representative~~ unless:

- (1) ~~He~~ The person is so registered under this Chapter;
- (2) ~~His~~ The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars (\$1,000,000), and governmental agencies or instrumentalities,

whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator; or

- (3) ~~He has no place of business in the State and during any period of 12 consecutive months does not direct business communications into this State in any manner to more than 10 clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in the State; or The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the State.~~

- (4) ~~He is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivisions (2) or (3), above.~~

(a) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

- (1) The person is registered under this Chapter; or
(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivision (2) or (3) of subsection (a) of this section; or
(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1).

(b) It is unlawful for any investment adviser required to be registered to employ or associate an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when he is not employed by or associated with an investment adviser registered under this Chapter. When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the Administrator. It is unlawful for any person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by (i) an investment adviser registered under this Chapter; or (ii) an investment adviser covered under federal law who has made a notice filing pursuant to the provisions of G.S. 78C-17(a1). When an investment adviser representative begins or terminates employment or association with an investment adviser who is registered under this Chapter, the investment adviser shall notify promptly the Administrator. When an investment adviser representative begins or terminates employment or association with an investment adviser covered under federal law, the investment adviser representative shall, and the investment adviser may, notify promptly the Administrator. No investment adviser representative may be registered with more than one investment adviser or investment adviser

covered under federal law unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(c) Every registration or notice filing expires December 31st of each year unless renewed.

(d) It is unlawful for any investment adviser covered under federal law to conduct advisory business in this State unless the investment adviser covered under federal law complies with the provisions of G.S. 78C-17(a1)."

Section 17. G.S. 78C-17 reads as rewritten:

"§ 78C-17. Registration and notice filing procedures.

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or his the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b). The application shall contain whatever information the Administrator by rule requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;
- (4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (5) The applicant's financial condition and history; and
- (6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to (i) an investment adviser covered under federal law whose only clients are those described in G.S. 78C-16(a)(2), or (ii) an investment adviser covered under federal law who has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those described in G.S. 78C-16(a)(2), who are residents of this State. A notice filing under this section may be renewed by (i) filing documents required by the Administrator and filed with the Securities and Exchange Commission, prior to the expiration of the notice filing, and (ii) paying the fee required under

subsection (b1) of this section. A notice filed under this section may be terminated by the investment adviser by providing the Administrator notice of the termination, which shall be effective upon receipt by the Administrator.

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars (\$200.00) in the case of an investment adviser, and forty-five dollars (\$45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of two hundred dollars (\$200.00) and a renewal notice filing fee of two hundred dollars (\$200.00).

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars (\$100,000) for registered investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars (\$100,000), subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be defined by rule, exceeds one hundred thousand dollars (\$100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

Section 18. G.S. 78C-18 reads as rewritten:

"§ 78C-18. Post-registration provisions.

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule ~~prescribes~~, prescribes, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a).

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his

discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule ~~prescribes~~, prescribes, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a).

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting ~~amendment~~ amendment, if the document is filed with respect to a registrant or when the amendment is required to be filed with the Securities and Exchange Commission with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 19. G.S. 78C-46(b) reads as rewritten:

"(b) Every applicant for registration under this Chapter shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 20. This act becomes effective October 1, 1997. Sections 1 through 13 of this act apply to securities offered or sold and to persons who offer or sell securities on or after the applicable effective date of each of these sections. Sections 14 through 19 of this act apply to advisory business conducted on or after the applicable effective date of each of these sections.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 2:16 p.m. on the 21st day of August, 1997.

H.B. 437

CHAPTER 420

AN ACT CHANGING THE METHOD FOR APPOINTMENT OF MEMBERS OF THE PILOT MOUNTAIN CIVIC AND RECREATION CENTER AUTHORITY AND AUTHORIZING THE TOWNS OF CORNELIUS, DAVIDSON, HUNTERSVILLE, AND NAGS HEAD TO ADOPT ORDINANCES REGULATING REMOVAL, REPLACEMENT, AND PRESERVATION OF TREES WITHIN THE TOWNS.

The General Assembly of North Carolina enacts:

Section 1. (a) Members of the Pilot Mountain Civic and Recreation Center Authority, heretofore appointed by the Board of Commissioners of the Town of Pilot Mountain after receiving nominations from the Pilot Mountain Foundation, Inc., shall henceforth be appointed solely by the Pilot Mountain Foundation, Inc.

(b) In case of a vacancy by resignation or death, the vacancy shall be filled by appointment of the Pilot Mountain Foundation, Inc. If any vacancy shall exist for more than 60 days after written notification of the vacancy has been given to the Pilot Mountain Foundation, Inc., by the Pilot Mountain Civic and Recreation Authority, the remaining members of the Authority may fill the vacancy for the remainder of the unexpired term.

Section 2. The Authority shall have the power to adopt rules, regulations, and bylaws governing its own operation subject only to approval of the Pilot Mountain Foundation, Inc.

Section 3. The Authority shall forward to the Pilot Mountain Foundation, Inc., copies of the minutes of its meetings, and may, but shall not be required to, forward copies of such minutes to the Town of Pilot Mountain.

Section 4. In order to preserve and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens, a municipality may adopt ordinances to regulate the planting, removal, and preservation of trees on public and private property within the municipality. Any ordinance adopted pursuant to this section shall exclude property to be developed for single-family or duplex residential uses.

Section 5. Prior to adopting an ordinance authorized by Section 4 of this act, a public hearing shall be held before the municipality's governing board. Notice of the hearing shall be given in accordance with G.S. 160A-364.

Section 6. Sections 4, 5, and 6 of this act shall apply only to the Towns of Cornelius, Davidson, Huntersville, and Nags Head.

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of August, 1997.

Became law on the date it was ratified.

S.B. 597

CHAPTER 421

AN ACT TO ALLOW PHYSICIANS PRACTICING PSYCHIATRY AND
PSYCHOLOGISTS TO FORM PROFESSIONAL CORPORATIONS
WITH LICENSED PROFESSIONAL COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-14(c) reads as rewritten:

"(c) A professional corporation may also be formed by and between or among:

- (1) A licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services;
- (2) Any combination of a registered nurse, nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, certified nurse midwife, and certified nurse anesthetist, to render nursing and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;
- (3) A physician and a physician assistant who is licensed, registered, or otherwise certified under Chapter 90 of the General Statutes to render medical and related services;
- (4) A physician practicing psychiatry, or a licensed psychologist, or both, and a certified clinical specialist in psychiatric and mental health nursing, ~~or~~ a certified clinical social worker, ~~or both,~~ a licensed professional counselor, or each of them, to render psychotherapeutic and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;
- (5) A physician and any combination of a nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, or certified nurse midwife, registered or otherwise certified under Chapter 90 of the General Statutes, to render medical and related services that the respective stockholders are licensed, certified, or otherwise approved to provide; and
- (6) A physician practicing anesthesiology and a certified nurse anesthetist to render anesthesia and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide."

Section 2. G.S. 55B-2(6) reads as rewritten:

- "(6) The term 'professional service' means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, 'Architects'; Chapter 84, 'Attorneys-at-Law'; Chapter 93, 'Public Accountants'; and Article 1, 'Practice of Medicine,' Article 2, 'Dentistry,' Article 6, 'Optometry,' Article 7, 'Osteopathy,' Article 8, 'Chiropractic,' Article 9A, 'Nursing Practice Act,'

with regard to registered nurses, Article 11, 'Veterinarians,' Article 12A, 'Podiatrists,' Article 18A, 'Practicing Psychologists,' and Article 18D, 'Occupational Therapy,' and Article 24, 'Licensed Professional Counselors,' of Chapter 90; Chapter 89C, 'Engineering and Land Surveying'; Chapter 89A, 'Landscape Architects'; Chapter 90B, 'Social Worker Certification Act' with regard to Certified Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, 'Geologists'; and Chapter 89B, 'Foresters.'"

Section 3. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 12th day of August, 1997.

Became law upon approval of the Governor at 2:12 p.m. on the 22nd day of August, 1997.

S.B. 442

CHAPTER 422

AN ACT TO ENSURE THAT PUBLIC SCHOOL STUDENTS RECEIVE ACCURATE INSTRUCTION ON OUR AMERICAN HISTORY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-81(g) reads as rewritten:

"(g) Civil Literacy. --

- (1) Local boards of education shall require during the high school years the teaching of the nation's founding and related documents, which shall include at least the major principles in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.
- (2) Local boards of education shall require that high school students demonstrate knowledge and understanding of the nation's founding and related documents in order to receive a certificate or diploma of graduation from high school.
- (3) Local boards of education shall include among the requirements for graduation from high school a passing grade in all courses that include primary instruction in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.
- (3a) Local boards of education shall allow and may encourage any public school teacher or administrator to read or post in a public school building, classroom, or event, excerpts or portions of writings, documents, and records that reflect the history of the United States, including, but not limited to, (i) the preamble to the North Carolina Constitution, (ii) the Declaration of Independence, (iii) the United States Constitution, (iv) the Mayflower Compact, (v) the national motto, (vi) the National Anthem, (vii) the Pledge of Allegiance, (viii) the writings, speeches, documents, and proclamations of the founding fathers

and Presidents of the United States, (ix) decisions of the Supreme Court of the United States, and (x) acts of the Congress of the United States, including the published text of the Congressional Record. Local boards, superintendents, principals, and supervisors shall not allow content-based censorship of American history in the public schools of this State, including religious references in these writings, documents, and records. Local boards and professional school personnel may develop curricula and use materials that are limited to specified topics provided the curricula and materials are aligned with the standard course of study or are grade level appropriate."

- (4) The State Board of Education shall require that any high school level curriculum-based tests developed and administered statewide beginning with academic year 1990-91 include questions related to the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.
- (5) The State Department of Public Instruction and the local boards of education, as appropriate, shall establish curriculum content and provide for teacher training to ensure that the intent and provisions of this subsection are carried out. The curriculum content established shall include a review of the contributions made by Americans of all ~~rac~~es during the period in which our nation was founded, ~~rac~~es."

Section 2. The State Board of Education shall adopt a policy by November 30, 1997, to ensure that the textbooks it adopts have no content-based censorship of American history, including religious references. The State Board may adopt textbooks that are limited to specified topics provided the textbooks are aligned with the standard course of study or are grade level appropriate.

Section 3. The State Board of Education shall provide a copy of this act to each local school superintendent in the State, and each local school superintendent shall ensure that school personnel within the unit are informed about the act.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

Became law upon approval of the Governor at 2:14 p.m. on the 22nd day of August, 1997.

H.B. 35

CHAPTER 423

AN ACT TO EXTEND THE TIME ALLOWED FOR CLAIMING SALES TAX REFUNDS, MOTOR FUEL TAX REFUNDS, AND ALTERNATIVE FUEL TAX REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX REFUND IS NET OF THE SALES TAX DUE ON THE FUEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(d) reads as rewritten:

"(d) Penalties for Late Applications. -- Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within ~~six months~~ three years after the due date, fifty percent (50%). Refunds applied for more than ~~six months~~ three years after the due date are barred."

Section 2. G.S. 105-449.109 reads as rewritten:

"§ 105-449.109. *Reduction or denial of late ~~annual or quarterly~~ refund application.*

An application filed with the Secretary within ~~six months~~ three years of the date the application is due must be accepted but is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within ~~six months~~ three years after the date the application is due. The Secretary shall not accept an application filed more than ~~six months~~ three years after the date the application is due."

Section 3. G.S. 105-164.13(11) reads as rewritten:

"(11) ~~Motor fuel subject to tax under Article 36C of this Chapter and alternative fuel subject to tax under Article 36D of this Chapter, regardless of whether those Articles exempt the fuel from tax or allow a refund of tax paid on the fuel.~~ Any of the following fuel:

- a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or (d) or under G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 4. G.S. 105-449.107, as amended by Section 14 of Chapter 33 of the 1997 Session Laws, reads as rewritten:

"§ 105-449.107. *Annual refunds for off-highway use and use by certain vehicles with power attachments.*

(a) Off-Highway. -- A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar ~~year at a rate equal to year.~~ The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1c) per gallon, the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. -- A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by any of the following vehicles:

- (1) A concrete mixing vehicle.
- (2) A solid waste compacting vehicle.
- (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
- (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
- (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

~~The refund rate shall be computed by subtracting one cent (1c) from the combined amount of amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, and multiplying the difference by thirty-three and one-third percent (33 1/3%).~~ less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section ~~shall~~ must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. -- Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

Section 5. Notwithstanding G.S. 105-164.14, as amended by this act, a taxpayer's sales tax refund application under G.S. 105-164.14(b) is timely filed if it is filed within four years after the due date and before July 1, 1998.

Section 6. Section 5 of this act is effective when it becomes law; the Department of Revenue shall not issue a refund of sales tax under Section 5 until July 1, 1998. Section 1 of this act becomes effective July 1, 1998. Sections 2 through 4 of this act become effective January 1, 1998, and apply to motor fuel and alternative fuel taxes paid on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

Became law upon approval of the Governor at 2:15 p.m. on the 22th day of August, 1997.

S.B. 861

CHAPTER 424

AN ACT AMENDING THE DISPENSING OPTICIANS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-237 reads as rewritten:
 "§ 90-237. *Qualifications for dispensing opticians.*

In order to be issued a license as a registered licensed optician by the North Carolina State Board of Opticians, the applicant:

- (1) Shall not have violated this Article or the rules of the ~~Board;~~
Board.
- (2) ~~Shall be at least 18 years of age and a high school graduate or equivalent; equivalent.~~
- (2a) Shall be of good moral character.
- (3) Shall have passed an examination conducted by the Board to determine his or her fitness to engage in the business of a dispensing optician; ~~and optician.~~
- (4) Shall have completed a six-month internship by working full time under the supervision of a licensed optician, ~~optometrist~~
optometrist, or physician trained in ophthalmology, in order to demonstrate proficiency in the areas of measurement of the face, and fitting and adjusting glasses and frames to the face, lens recognition, lens design, and prescription interpretation."

Section 2. G.S. 90-241 reads as rewritten:

"§ 90-241. *Waiver of written examination requirements.*

(a) ~~The Board shall grant a license without examination to any applicant who holds a currently valid license as a dispensing optician issued by another state, is in good standing in such other state, has engaged in practice in such other state as a licensee for four years immediately preceding the application in this State, is at least 18 years of age, and has not violated this Article or the rules of the Board, who:~~

- (1) Is at least 18 years of age.
- (2) Is of good moral character.
- (3) Holds a license in good standing as a dispensing optician in another state.
- (4) Has engaged in the practice of opticianry in the other state for four years immediately preceding the application to the Board.
- (5) Has not violated this Article or the rules of the Board.

(b) ~~The Board will shall grant admission to the next examination and grant license upon attainment of a passing score on the examination to persons from other states who are not licensed but who have worked a person who has worked, in a state that does not license opticians, in opticianry for four years immediately preceding the application to the Board performing tasks and taking the curriculum equivalent to the North Carolina apprenticeship, and who meet meets the requirements of G.S. 90-237, subsections (1), (2) and (3). G.S. 90-237(1) through (3).~~

(c) Any person desiring to secure a license under this section shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in G.S. 90-246.

(d) ~~Upon receipt of the application described in subsection (c) above, the Board may issue a temporary license to engage in opticianry in this State. Persons issued a temporary license under this subsection may engage in opticianry in this State for not more than 60 days while awaiting a final decision on licensure by the Board. The Board shall make a final decision on licensure under this subsection not later than 60 days after receipt of the initial application. If the Board does not approve licensure under this~~

~~subsection, the applicant, if operating under a temporary license, shall immediately surrender it to the Board and cease the practice of opticianry in this State."~~

Section 3. G.S. 90-244(b) reads as rewritten:

"(b) A license issued by the Board automatically expires on the first day of January of each year. A license ~~may~~ shall be reinstated without penalty ~~during the month from January 1 through January 15 immediately following expiration. After the end of the month, expiration.~~ After January 15, a license ~~may~~ shall be reinstated by payment of the renewal fee and a penalty of ~~five dollars (\$5.00) per month not to exceed the license fee itself, fifty dollars (\$50.00).~~ Licenses ~~which that~~ remain expired two years or more ~~may~~ shall not be reinstated."

Section 4. G.S. 90-246 reads as rewritten:

"§ 90-246. Fees.

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the Board is hereby authorized to charge and collect fees established by its rules ~~and regulations~~ not to exceed the following:

(1) Each examination.....	<u>\$125.00</u>	<u>\$200.00</u>
(2) Each initial license	<u>\$25.00</u>	<u>\$ 50.00</u>
(3) Each renewal of license	<u>60.00</u>	<u>\$100.00</u>
(4) Each license issued to a practitioner of another state to practice in this State.....	<u>\$100.00</u>	<u>\$200.00</u>
(5) Each registration of an optical place of business.....	<u>\$25.00</u>	<u>\$ 50.00</u>
(6) Each application for registration as an opticianry apprentice or intern, and renewals thereof	<u>\$25.00</u>	
(7) Temporary license issued pursuant to G.S. 90-241(d)	<u>\$25.00.</u>	
(8) <u>Each registration of a training establishment</u>	<u>\$ 25.00</u>	
(9) <u>Each license verification</u>		<u>\$ 10.00.</u>

Section 5. G.S. 90-249 reads as rewritten:

"§ 90-249. Powers of the Board.

(a) The Board shall have the power to make ~~rules and regulations, rules,~~ not inconsistent with this Article and the laws of the State of North Carolina, with respect to the following areas of the business of opticianry in North Carolina:

- (1) Misrepresentation to the ~~public;~~ public.
- (2) Baiting or deceptive ~~advertising;~~ advertising.
- (3) Continuing education of ~~licensees;~~ licensees.
- (4) Location of registrants in the ~~State;~~ State.
- (5) Registration of established optical places of business, ~~provided but~~ no rule restricting type or location of a business may be ~~enacted;~~ enacted.
- (6) ~~Requiring~~ photographs for purposes of identification of persons subject to this ~~Article;~~ Article.

- (7) Content of licensure examination and reexamination;
- (8) Revocation, suspension, and reinstatement of license and reprimands; licenses, probation, and reprimands of licensees, and other penalties.
- (9) Fees within the limits of G.S. 90-246; G.S. 90-246.
- (10) Accreditation of schools of opticianry; opticianry.
- (11) Registration and training of apprentices and interns; interns.
- (12) License without examination and issuance of temporary license. Licenses and examinations pursuant to G.S. 90-241.

~~(b) The Board shall have the power to revoke, suspend or issue a reprimand with regard to any license granted by it under this Article for misconduct, gross negligence, incompetence, or violation of this Article or the rules of the Board promulgated hereunder. It shall be grounds for revocation of a license to advertise in any manner which conveys or intends to convey the impression to the public that the eyes are examined by persons licensed under this Article. Other than as expressly provided in this Article, the Board shall neither adopt nor enforce any rule, regulation or policy which prohibits advertising.~~

~~(c) Any person whose license has been revoked for any cause may, after the expiration of 90 days, and within two years from the date of revocation, apply to the Board to have the same reinstated, and upon a showing satisfactory to the Board, the license may be restored to such person.~~

~~(d) The procedure for revocation and suspension of a license or refusal to grant license or permission to sit for the examination shall be in accordance with the provisions of Chapter 150B of the General Statutes."~~

Section 6. Article 17 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-249.1. Disciplinary actions.

(a) The Board may suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

- (1) Offering to practice or practicing as a dispensing optician without a license.
- (2) Aiding or abetting an unlicensed person in offering to practice or practicing as a dispensing optician.
- (3) Selling, transferring, or assigning a license.
- (4) Engaging in fraud or misrepresentation to obtain or renew a license.
- (5) Engaging in false or misleading advertising.
- (6) Advertising in any manner that conveys or intends to convey the impression that eyes are examined by persons licensed under this Article or optical places of business registered under this Article.
- (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, incompetence, or gross misconduct.
- (8) Being convicted of a crime involving fraud or moral turpitude.
- (9) Violating any provision of this Article or the rules adopted by the Board.

(b) In addition or as an alternative to taking any of the actions permitted in subsection (a) of this section, the Board may assess a licensee a civil

penalty of not more than one thousand dollars (\$1,000) for the violation of any section of this Article. In any case in which the Board is authorized to take any of the actions permitted in subsection (a) of this section, the Board may instead accept an offer in compromise of the charges whereby the accused licensee shall pay to the Board a civil penalty of not more than one thousand dollars (\$1,000). All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(c) In determining the amount of a civil penalty, the Board may consider:

- (1) The degree and extent of harm caused by the violation to public health and safety or the potential for harm.
- (2) The duration and gravity of the violation.
- (3) Whether the violation was willful or reflects a continuing pattern.
- (4) Whether the violation involved elements of fraud or deception.
- (5) Prior disciplinary actions against the licensee.
- (6) Whether and to what extent the licensee profited from the violation.

(d) Any person, including the Board and its staff, may file a complaint with the Board alleging that a licensee committed acts in violation of subsection (a) of this section. The Board may, without holding a hearing, dismiss the complaint as unfounded or trivial. Any hearings held pursuant to this section shall be conducted in accordance with Chapter 150B of the General Statutes."

Section 7. G.S. 90-238 reads as rewritten:

"§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.

~~There is hereby created a~~ The North Carolina State Board of Opticians ~~whose duty it shall be~~ is created. The Board's duty is to carry out the purposes and enforce the provisions of this Article. The Board shall consist of seven members appointed by the Governor as follows:

- (1) Five licensed dispensing opticians, each of whom shall serve three-year terms;
- (2) Two residents of North Carolina who are not licensed as dispensing opticians, physicians, or optometrists, who shall serve three-year terms.

Each member of the Board shall serve until ~~his~~ the member's successor is appointed and ~~qualifies; provided that no~~ qualifies. ~~No person shall serve on this Board for more than two complete consecutive terms. Each~~ Before beginning office, each member of the Board, before entering upon his ~~duties, Board shall take all oaths prescribed for other State officers in the manner provided by law, which oaths shall be filed in the office of the Secretary of State. The Governor, at his option, Governor may remove any member of the Board for good cause shown, may appoint members to fill unexpired terms, and must make optician appointments from a list of three nominees for each vacancy submitted by the Board as a result of an election conducted by the Board in May of each year and open to all licensees."~~

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1997.

Became law upon approval of the Governor at 2:17 p.m. on the 22nd day of August, 1997.

S.B. 833

CHAPTER 425

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina - General Administration, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State. However, the funding amounts in Section 2 of this act are the maximum authorized amounts for these projects subject to changes allowed under Section 4 of this act.

If the General Assembly appropriates funds for all or part of any project authorized by Section 2 of this act, then the funds may be used as part of the project, but shall be subject to the maximum authorized amounts as set forth in Section 2 of this act. No appropriations from the General Fund shall be used for a project authorized by this act, except as provided in this paragraph.

Section 2. The capital improvements projects authorized by this act to be constructed and financed as provided in Section 1 of this act are as follows:

1.	Appalachian State University	
	Small Group Housing	\$10,748,300
	Bookstore Renovation and Expansion	3,710,200
2.	East Carolina University	
	Renovations to Jarvis Residence Hall	4,644,800
	Life Safety Improvements in Nonacademic Facilities	3,550,500
	Repairs to Dowdy-Ficklen Stadium	3,467,100
3.	North Carolina A & T State University	
	Parking Deck	6,528,000
4.	North Carolina State University	
	Installation of Air Conditioning and Sprinkler Systems - Five Residence Halls	14,187,000
	Partners Building IV	16,200,000
	Centennial Campus Infrastructure	8,164,000
5.	The University of North Carolina at Chapel Hill	
	Replace Coal Silos at the Cogeneration Facility	7,358,200
	Residence Hall Video Network & Communications Wiring	6,646,800

	Renovation of Graham Memorial (Center for Undergraduate Excellence)	5,208,400
	Building for the Institute for the Arts and Humanities	4,096,700
	Paul J. Rizzo Conference Center	15,507,700
6.	The University of North Carolina at Charlotte Student Housing Phase VII Apartments	18,851,000
	Student Recreation Fields	1,355,700
7.	The University of North Carolina at Wilmington 200-Bed Housing	6,351,100
	Parking Deck	7,069,500
8.	The University of North Carolina - General Administration	
	Systemwide Sprinkler and Fire Detection Systems	18,402,000.

Section 3. With respect to three projects at the University of North Carolina at Chapel Hill among those identified in Section 2 of this act, the institution may, in addition to those means of construction and financing authorized under Section 1 of this act, accomplish construction and financing through lease arrangements to and from nonprofit corporations, as follows:

1. Renovation of Graham Memorial through lease with the University of North Carolina at Chapel Hill Arts and Sciences Foundation, Incorporated
2. Building for the Institute for Arts and Humanities through lease with the J.R. Hyde, III Family Foundation
3. Renovation and buildings for the Paul J. Rizzo Conference Center through lease with the Kenan-Flagler Business School Foundation.

The term of each lease may be for such duration as the parties agree, not to exceed the longer of the period of capital improvement, and, if the nonprofit corporation incurs indebtedness to finance construction, the period required to retire the indebtedness. For the purposes of contracting for the design, construction, and equipping of these facilities, the University of North Carolina at Chapel Hill may enter into an agreement that provides for the leasing nonprofit corporation to serve as the construction management agent, having general supervision of the construction and equipping of the facility. Each leasing nonprofit corporation and the University of North Carolina at Chapel Hill may enter into combined contracts for project design, construction, and construction management. For purposes of financing construction, the University of North Carolina at Chapel Hill may enter into a long-term lease from the leasing nonprofit corporation. If the General Assembly appropriates funds for some portion of one of these projects, the University of North Carolina at Chapel Hill and the leasing nonprofit corporation acting as the construction management agent for that project shall not enter into a construction contract without first consulting with the Office of State Construction. No appropriated funds may be used for lease payments or operating costs during this financing period. When a lease to a nonprofit corporation authorized by this section ends, the University of

North Carolina at Chapel Hill shall have the option (i) to receive the premises as improved, unencumbered facilities of the institution if the premises as improved meet all applicable standards for possession and use by the institution as a State facility, or (ii) to receive the premises and to remove or demolish the improvements made under the prior lease.

Section 4. At the request of The University of North Carolina Board of Governors and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding, a project authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1997.

Became law upon approval of the Governor at 2:18 p.m. on the 22nd day of August, 1997.

H.B. 495

CHAPTER 426

AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS SERVICE TO UNSERVED COUNTIES THAT REFLECT THE COST OF PROVIDING SERVICE TO THE UNSERVED COUNTIES AND AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR NATURAL GAS EXPANSION.

The General Assembly of North Carolina enacts:

PART I.

DIFFERENT RATES

Section 1. G.S. 62-140(a) reads as rewritten:

"(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section; provided that it shall not be an unreasonable preference or advantage or constitute discrimination against any person, firm or corporation or general rate payer for telephone utilities to contract with motels, hotels and hospitals to pay reasonable commissions in connection with the handling of intrastate toll calls charged to a guest or patient and collected by the motel, hotel or hospital; provided further, that payment of such commissions shall be in accordance with uniform tariffs which shall be subject to the approval of the Commission. Provided further, that it shall not be considered an unreasonable preference or advantage for the Commission to order, if it finds the public interest so requires, a reduction in local telephone rates for

low-income residential consumers meeting a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission.

Nothing in this section prohibits the Commission from establishing different rates for natural gas service to counties that are substantially unserved, to the extent that those rates reflect the cost of providing service to the unserved counties and upon a finding by the Commission that natural gas service would not otherwise become available to the counties."

PART II.

NATURAL GAS DISTRICTS

Section 2. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 28.

"Regional Natural Gas District.

"§ 160A-660. Title.

This Article is the 'Regional Natural Gas District Act' and may be cited by that name.

"§ 160A-661. Purpose; definitions.

(a) The purpose of a district created under this Article is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas systems to enhance the economic development of the area.

(b) The following definitions apply in this Article:

- (1) Board of Trustees. -- The governing board of the district in which the general legislative powers of the district are vested.
- (2) District. -- A regional natural gas district.
- (3) Natural gas system. -- A gas production, storage, transmission and distribution system, or any part or parts thereof.
- (4) Regional natural gas district. -- A public body and body politic and corporate of the State of North Carolina organized in accordance with the provisions of this Article exercising public and essential governmental functions to provide for the preservation and promotion of the public welfare for the purposes, with the powers, and subject to the restrictions set forth in this Article.
- (5) Unit of local government. -- Any county, city, town, or municipality of this State, and any other political subdivision, public corporation, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate natural gas systems.
- (6) Unit of local government's chief administrative official. -- The county manager, city manager, town manager, or other person, by whatever title known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-662. Territorial jurisdiction and service area of district.

(a) A district may be created for one or more entire counties that are totally unserved with natural gas and in which a specific natural gas project has not been approved by the Utilities Commission at the time of creation of the district. A letter from the Utilities Commission to this effect shall conclusively establish that the area is totally unserved and that a project has

not been approved. This area is the territorial jurisdiction and the service area of the district.

(b) The creation of a district does not confer on the district the exclusive right to provide natural gas service in that territorial jurisdiction.

"§ 160A-663. Creation of district.

(a) The boards of commissioners of any one or more counties within an area for which a district may be created as provided by G.S. 160A-662, and the governing body of any city geographically located within one or more of these counties and that chooses to join in the organization of a district, may by resolution signify their determination to organize a district under the provisions of this Article. Each of these resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the district, and shall state the time and place of the public hearing. A copy of the notice shall be mailed not later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the North Carolina Utilities Commission to serve any part of the proposed district with natural gas service. No county or city shall be required to make any other publication of the resolution under the provisions of any other law.

(b) Each resolution shall include articles of incorporation which shall set forth all of the following:

- (1) The name of the district.
- (2) The composition of the board of trustees, terms of office, and the manner of making appointments and filling vacancies.
- (3) A statement that the district is organized under this Article.
- (4) The names of the organizing counties and cities.
- (5) Provision for the distribution of assets in the event the district is terminated.

(c) A certified copy of each of the resolutions signifying the determination to organize a district under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication and mailing of the notice of hearing on each of the resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published and mailed, the Secretary of State shall file the resolutions and proofs of publication and mailing, shall issue a certificate of incorporation under the seal of the State, and shall record the certificate in an appropriate book of record. The issuance of this certificate of incorporation by the Secretary of State shall constitute the district a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under this Article.

(d) When the district has been duly organized and its officers elected, the secretary of the district shall certify to the Secretary of State the names and addresses of the officers, the name and address of the registered agent, and

the address of the principal office of the district. The district shall be subject to the provisions of Article 5 of Chapter 55A of the General Statutes.
"§ 160A-664. Membership; officers; compensation.

(a) The governing body of a district is the Board of Trustees. The Board of Trustees shall consist of members as provided in the articles of incorporation.

(b) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(c) Members of the Board of Trustees shall reside within the territorial jurisdiction of the district as defined by G.S. 160A-662.

(d) The Board of Trustees shall annually elect from its membership a Chair and a Vice-Chair and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive a sum not to exceed fifty dollars (\$50.00) as compensation for attendance at each duly conducted meeting of the district.

"§ 160A-665. Quorum.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business.

"§ 160A-666. Advisory committees.

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees.

"§ 160A-667. General powers of the district.

The general powers of the district include all of the following:

- (1) To sue and be sued.
- (2) To have a seal.
- (3) To make rules not inconsistent with this Article, for its organization and internal management.
- (4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.
- (5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.
- (6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.
- (7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not

been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.

- (8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.
- (9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.
- (10) To develop and make data, plans, information, surveys, and studies of natural gas systems within the territorial jurisdiction of the district and to prepare and make recommendations in regard thereto.
- (11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.
- (12) To develop and carry out demonstration projects.
- (13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.
- (14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.
- (15) To own, lease, and operate natural gas systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems and transport and sell at wholesale all or any part of its gas supply.
- (16) To purchase or finance real or personal property under G.S. 160A-20.
- (17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.

- (18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the General Statutes and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district. A district may provide service or contract for the providing of service to a city geographically located within a district, notwithstanding that the city did not join the district pursuant to G.S. 160A-663(a) or G.S. 160A-672.
- (19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, to set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-676.
- (20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.
- (21) To issue revenue bonds and notes and to incur other obligations as authorized by this Article.

"§ 160A-668. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-669. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas.

"§ 160A-670. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect unless superseded by rules of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government.

"§ 160A-671. Termination of district.

The Board of Trustees, after providing for the continued availability of natural gas service to its customers, if any, may terminate the existence of the district at any time when it has no outstanding indebtedness. The Board of Trustees shall file notification of the termination with the Secretary of State.

"§ 160A-672. Joinder of county or city.

(a) Whenever a district has been organized under the provisions of this Article, a county as defined in G.S. 160A-662(a) or a city within that county, or a city that did not join in the organization of a district but is geographically located within the district may, with the consent of the district as evidenced by a resolution adopted by a majority of the members of the Board of Trustees of the district, join the district.

(b) A county or city desiring to join an existing district shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 160A-663. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing.

(c) A certified copy of each resolution signifying the desire of a county or city to join an existing district, together with proof of publication of the notice of hearing on the resolution, and a certified copy of the resolution of the Board of Trustees of the district consenting to the joining shall be filed with the Secretary of State. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, the Secretary of State shall file such resolutions and proofs of publication in the office of the Secretary of State, shall issue a certificate of joinder, and shall record the certificate in the appropriate book of record. The issuance of the certificate shall be conclusive evidence of the joinder of the county or city to the district.

"§ 160A-673. Bonds and notes authorized.

The district may issue revenue bonds and revenue bond anticipation notes pursuant to the provisions of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and Article 9 of Chapter 159 for the purposes provided in this Article. If and to the extent any provisions of Articles 5 and 9 of Chapter 159 are inconsistent with the provisions of this Article, the provisions of this Article shall be controlling. A district may proceed with the issuance of bonds and notes under Articles 5 and 9 of Chapter 159 notwithstanding that, to the extent of any inconsistency only, the district complies with the provisions of this Article and not the provisions of Articles 5 and 9 of Chapter 159.

"§ 160A-674. Acquisition, power of eminent domain.

(a) The district shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district.

(b) Exercise of the power of eminent domain by the district shall be as a private condemnor in accordance with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General Statutes, before final judgment may be entered in any action of condemnation initiated by the district, the district shall furnish proof that the board of commissioners of the county where the land is located has consented by resolution or ordinance to the taking.

"§ 160A-675. Tax exemption.

A district, and its property, bonds and notes, and income, are exempt from property taxes and income taxes to the same extent as if it were a city. A district is subject to gross receipts tax under G.S. 105-116.

"§ 160A-676. Authority to fix and enforce rates.

(a) A district may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties made applicable throughout the district for the gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges, or penalties, the district Board of Trustees shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter."

Section 3. G.S. 105-116 reads as rewritten:

"§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and sewerage companies.

(a) Tax. -- An annual franchise or privilege tax is imposed on ~~a person, firm, or corporation, other than a municipal corporation, that is:~~ the following:

- (1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.
- (2) A natural gas company engaged in the business of furnishing piped natural gas.
- (2a) A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.
- (3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
- (4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business

of furnishing electricity, electric lights, current, or power. The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas. The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. ~~An electric power company or company, a natural gas company company, or a regional natural gas district shall pay tax monthly.~~ A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. ~~An electric power company or a natural gas company~~ A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the ~~company~~ taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A ~~company~~ taxpayer shall submit a report on a form provided by the Secretary. The report shall include the ~~company's~~ taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The ~~company's~~ taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The ~~company's~~ taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a city having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the ~~company~~ taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

- (4) For an electric power ~~company or company~~, a natural gas company, or a regional natural gas district, the ~~company's~~ entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

A ~~company taxpayer~~ shall report its gross receipts on an accrual basis. If a ~~company's taxpayer's~~ report does not state the ~~company's taxpayer's~~ taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the ~~company's taxpayer's~~ taxable gross receipts to the city.

(c) Gas Special Charges. -- Gross receipts of a natural gas company do not include the following:

- (1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

- (2) Natural gas expansion surcharges imposed under G.S. 62-158.

(d) Distribution. -- Part of the taxes imposed by this section on electric power ~~companies and natural gas companies~~ companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. -- So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.

(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.

Section 3.1. G.S. 105-116.1 reads as rewritten:

"§ 105-116.1. *Distribution of gross receipts taxes to cities.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.
- (2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company, a natural gas company, a regional natural gas district,

and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) **Distribution.** -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies, natural gas companies, regional natural gas districts, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) **Limited Hold-Harmless Adjustment.** -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.
- (2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.
- (3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.
- (4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's adjusted 1995-96 amount and the city's 1990-91 distribution.

(d) **Allocation of Hold-Harmless Adjustment.** -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.
- (2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.
- (3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.
- (4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power company, a gas company, a regional natural gas district, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e) or a municipality that sells electric power, other than a

municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

Section 6. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Section 7. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.
- (6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1).

(9) A regional natural gas district, as defined by Article 28 of this Chapter."

Section 7.1. If Ratified Senate Bill 389, 1997 Regular Session becomes law, then G.S. 160A-20(h)(9) as enacted by Section 7 of this act is recodified as G.S. 160A-20(h)(10).

Section 8. G.S. 62-3(23) is amended by adding a new subdivision to read:

"k. The term 'public utility' shall not include a regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes."

Section 9. G.S. 62-50(g) reads as rewritten:

"(g) For the purpose of this section, 'gas operators' include gas utilities and gas pipeline carriers operating under a franchise from the Utilities Commission, municipal corporations operating municipally owned gas distribution systems, regional natural gas districts organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes, and public housing authorities and any person operating apartment complexes or mobile home parks that distribute or submeter natural gas to their tenants. This section does not confer any other jurisdiction over municipally owned gas distribution systems, regional natural gas districts, public housing authorities or persons operating apartment complexes or mobile home parks."

Section 10. (a) Insofar as the provisions of this act are not consistent with the provisions of any other law, public or private, the provisions of this act shall be controlling.

(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly.

(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(d) If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

PART III.

EFFECTIVE DATES

Section 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 1997.

Became law upon approval of the Governor at 2:20 p.m. on the 22nd day of August, 1997.

S.B. 812

CHAPTER 427

AN ACT TO PROVIDE FOR SPECIAL REGISTRATION PLATES FOR SUPPORTERS OF THE GREAT SMOKY MOUNTAINS NATIONAL PARK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b)(23a) reads as rewritten:

"(23a) State Attraction. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina."

Section 2. G.S. 20-81.12(b2) reads as rewritten:

"(b2) State Attraction Plates. -- The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

- (1) The Friends of the Great Smoky Mountains National Park. -- The revenue derived from the special plate shall be transferred quarterly to the Friends of the Great Smoky Mountains National Park, Inc., to be used for educational materials, preservation programs, capital improvements for the portion of the Great Smoky Mountains National Park that is located in North Carolina, and operating expenses of the Great Smoky Mountains National Park.
- (2) The North Carolina Arboretum. -- The revenue derived from the special plate shall be transferred quarterly to The North Carolina Arboretum Society and used to help the Society obtain grants for the North Carolina Arboretum and for capital improvements to the North Carolina Arboretum.
- (2) (3) The North Carolina Zoological Society. -- The revenue derived from the special plate shall be transferred quarterly to The North Carolina Zoological Society, Incorporated, to be used for educational programs and conservation programs at the North Carolina Zoo at Asheboro and for operating expenses of the North Carolina Zoo at Asheboro."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

Became law upon approval of the Governor at 2:23 p.m. on the 22nd day of August, 1997.

S.B. 884

CHAPTER 428

**AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION
TO ESTABLISH A STATE INFRASTRUCTURE BANK.**

Whereas, the General Assembly finds that the improvement, rehabilitation, expansion, and construction of transportation facilities by governmental units contribute to the economic welfare of the State by enhancing economic development, providing employment opportunities, and improving transportation systems; and

Whereas, additional financial assistance is required to support the improvement, rehabilitation, expansion, and construction of transportation facilities by governmental units; and

Whereas, the Federal Intermodal Transportation Efficiency Act of 1991, Pub. L. No. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended, make federal funds available to provide such financial assistance through infrastructure banking programs; and

Whereas, the General Assembly finds it to be in the State's best interest to utilize available federal funds to assist governmental units in the improvement, rehabilitation, expansion, and construction of transportation facilities through the establishment of a State infrastructure banking program within the Department of Transportation; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-18 is amended by adding a new subdivision to read:

"(12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality's share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The

infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of August, 1997.

Became law upon approval of the Governor at 2:23 p.m. on the 22nd day of August, 1997.

S.B. 699

CHAPTER 429

AN ACT TO PROVIDE THAT THE PLACE OF BUSINESS OF A MOTOR VEHICLE DEALER WHO SELLS ONLY TRAILERS OR SEMITRAILERS DOES NOT HAVE TO MEET THE REQUIREMENTS SET FOR AN ESTABLISHED OFFICE OR SALESROOM OF A MOTOR VEHICLE DEALER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-288(d) reads as rewritten:

"(d) To obtain a license as a wholesaler, ~~the~~ an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State. State, and an applicant who intends to deal in only trailers or semitrailers of less than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 1997.

Became law upon approval of the Governor at 2:24 p.m. on the 22nd day of August, 1997.

S.B. 297

CHAPTER 430

AN ACT TO AMEND THE LAWS GOVERNING CHARTER SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.29B reads as rewritten:

"§ 115C-238.29B. *Eligible applicants; contents of applications; submission of applications for approval.*

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school ~~within a local school administrative unit~~ may apply to establish a charter school ~~on behalf of a private nonprofit corporation.~~ school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall contain at least the following information:

- (1) A description of a program that implements one or more of the purposes in G.S. 115C-238.29A.
- (2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.
- (3) The governance structure of the school including the names of the proposed initial members of the board of directors of the nonprofit, tax-exempt corporation and the process to be followed by the school to ensure parental involvement.
- (3a) The local school administrative unit in which the school will be located.
- (4) Admission policies and procedures.
- (5) A proposed budget for the school and evidence that the financial plan for the school is economically sound.

- (6) Requirements and procedures for program and financial audits.
 - (7) A description of how the school will comply with G.S. 115C-238.29F.
 - (8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.
 - (9) The term of the ~~contract~~ charter.
 - (10) The qualifications required for individuals employed by the school.
 - (11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.
 - (12) The number of students to be served, which number shall be at least 65, and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than 65 students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population.
 - (13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.
 - (14) ~~A description of whether the school will operate independently of the local board of education or whether it agrees to be subject to some supervision and control of its administrative operations by the local board of education. In the event the charter school elects to operate independently of the local board of education, the application must specify which employee benefits will be offered to its employees and how the benefits will be funded.~~
- (c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:
- (1) The local board of education of the local school administrative unit in which the charter school will be located;
 - (2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or
 - (3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

Notwithstanding the provisions of this subsection, if the State Board of Education finds that an applicant (i) submitted an application to a local board of education and received final approval from the State Board of Education, but (ii) is unable to find a suitable location within that local school

administrative unit to operate, the State Board of Education may authorize the charter school to operate within an adjacent local school administrative unit for one year only. The charter school cannot operate for more than one year unless it reapplies, in accordance with subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board of Education.

(c1) Unless an applicant submits its application under subsection (c) of this section to the local board of education of the local school administrative unit in which the charter school will be located, the applicant shall submit a copy of its application to that local board within seven days of its submission under subsection (c) of this section. The local board may offer any information or comment concerning the application it considers appropriate to the chartering entity. The local board shall deliver this information to the chartering entity no later than January 1 of the next calendar year. The applicant shall not be required to obtain or deliver this information to the chartering entity on behalf of the local board. The State Board shall consider any information or comment it receives from a local board and shall consider the impact on the local school administrative unit's ability to provide a sound basic education to its students when determining whether to grant preliminary and final approval of the charter school."

Section 2. Part 6A of Article 16 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"§ 115C-238.29K. Criminal history checks.

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of

Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'School personnel' means any:

- a. Member of the board of directors of a charter school,
- b. Employee of a charter school, or
- c. Independent contractor or employee of an independent contractor of a charter school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of a charter school.

(b) The State Board of Education shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The policy shall not require school personnel to be checked for a criminal history check before preliminary approval is granted under G.S. 115C-238.29B. The Board shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The Board may grant conditional approval of an application while the Board is checking a person's criminal history and making a decision based on the results of the check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the criminal history check authorized under this section.

(c) The Board of Education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the State Board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The State Board shall consider refusal to consent when deciding whether to grant final approval of an application under G.S. 115C-238.29D and when making an employment recommendation. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the State Board of Education the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the Board requires a criminal history check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the fingerprints authorized under this section.

(d) The State Board shall review the criminal history it receives on an individual. The State Board shall determine whether the results of the

review indicate that the individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when deciding whether to grant final approval of an application for a charter school under G.S. 115C-238.29D and for making an employment recommendation to the board of directors of a charter school. The State Board shall make written findings with regard to how it used the information when deciding whether to grant final approval under G.S. 115C-238.29D and when making an employment recommendation.

(e) The State Board shall notify in writing the board of directors of the charter school of the determination by the State Board as to whether the school personnel is qualified to operate or be employed by a charter school based on the school personnel's criminal history. At the same time, the State Board shall provide to the charter school's board of directors the written findings the Board makes in subsection (d) of this section and its employment recommendation. If the State Board recommends dismissal or nonemployment of any person, the board of directors of the charter school shall dismiss or refuse to employ that person. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the State Board shall not release nor disclose any portion of the school personnel's criminal history to the charter school's board of directors or employees. The State Board also shall notify the school personnel of the procedure for completing or challenging the accuracy of the criminal history and the personnel's right to contest the State Board's determination in court.

(f) All the information received by the State Board of Education or the charter school in accordance with subsection (e) of this section through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the State Board of Education or the board of directors of the charter school. The State Board of Education or the board of directors of the charter school may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the State Board of Education or the board of directors of the charter school, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

Section 3. G.S. 115C-238.29D(d) reads as rewritten:

"(d) The State Board of Education may grant a the initial charter for a period not to exceed five years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed five years each. A material revision of the provisions of a charter application shall be made

only upon the approval of the State Board of Education. Beginning with the charter school's second year of operation and annually thereafter, the State Board shall allow a charter school to increase its enrollment by ten percent (10%) of the school's previous year's enrollment or as is otherwise provided in the charter. This enrollment growth shall not be considered a material revision of the charter application and shall not require the prior approval of the State Board."

Section 4. G.S. 115C-238.29E reads as rewritten:

"§ 115C-238.29E. Charter school operation.

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its charter, charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application.

(c) A charter school shall operate under ~~a written contract~~ the written charter signed by the local board of education entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The contract charter shall incorporate at a minimum the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

~~If the local board of education does not sign the contract, the State Board may sign on behalf of the local board.~~

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) ~~A charter school shall be located in the local school administrative unit with which it signed the contract. Its~~ A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education, ~~from a public or private nonsectarian organization, education or~~ as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its contract, charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit."

Section 5. G.S. 115C-238.29F reads as rewritten:

"§ 115C-238.29F. *General requirements.*

(a) Health and Safety Standards. -- A charter school shall meet the same health and safety requirements required of a local school administrative unit.

(b) School Nonsectarian. -- A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge ~~tuition~~. tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. --

(1) The board of directors of a charter school may sue and be sued. The State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the contract charter. Any sovereign immunity of the charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. ~~In the event a charter school has not elected total independence from the local board of education under subsection (e) of this section, the immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.~~

(d) Instructional Program. --

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education

and the student performance standards contained in the ~~contract with the local board of education charter.~~

- (3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.
- (4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.
- (5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General ~~Statutes; Statutes~~, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its ~~contract charter.~~

(e) Employees. --

- (1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.
- (2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.
- (3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter school, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. The For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave or extension of leave be made up to 45 days before the teacher would otherwise have to report for duty. For subsequent years, the local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be

placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

- (4) ~~In the event a charter school, in its application, elects total independence from the local board of education, its employees shall not be deemed to be employees of the local school administrative unit and shall not be entitled to any State-funded employee benefits, including membership in the North Carolina Teachers' and State Employees' Retirement System or the Teachers' and State Employees' Comprehensive Major Medical Plan. In the event a charter school, in its application, agrees to be subject to some supervision and control of its administrative operations by the local board of education, the~~ The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The Board of Trustees of the Teachers' and State Employees' Retirement System, in consultation with the State Board of Education, shall determine the degree of supervision and control necessary to qualify the employees of the applicant for membership in the Retirement System. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees and are 'teachers' for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. --

- (1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools.
- (2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.
- (3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. --

- (1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.
- (2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.
- (3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.
- (4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides, ~~except that the provisions of G.S. 115C-366(d) shall apply to a student who wishes to attend a charter school in a county other than the county in which the student resides.~~
- (5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the contract, charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school.

Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

- (6) The During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.

- (7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) ~~Transportation. -- The charter school shall provide transportation for students enrolled at the school who reside in the local school administrative unit in which the school is located. The charter school may provide transportation for students enrolled at the school who reside in different local school administrative units.~~ school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

- (i) Assets. -- Upon dissolution of the charter school or upon the nonrenewal of the charter, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located."

Section 6. G.S. 115C-238.29G reads as rewritten:

"§ 115C-238.29G. ~~Causes for nonrenewal or termination.~~ termination; disputes.

(a) The State Board of Education, or a chartering entity subject to the approval of the State Board of Education, may terminate or not renew a ~~contract~~ charter upon any of the following grounds:

- (1) Failure to meet the requirements for student performance contained in the ~~contract; charter;~~
- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violation of any of the conditions, standards, or procedures set forth in the ~~contract; charter;~~
- (5) Two-thirds of the faculty and instructional support personnel at the school request that the ~~contract~~ charter be terminated or not renewed; or
- (6) Other good cause identified.

(b) The State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering ~~entity~~ entity or the local board of education during the time of its charter.

(c) The State Board and the charter school are encouraged to make a good-faith attempt to resolve the differences that may arise between them. They may agree to jointly select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the differences. The mediator shall, at the request of either the State Board or a charter school, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. The mediator may determine that an impasse exists and discontinue the mediation at any time. The mediator shall not make any recommendations or public statement of findings or conclusions. The State Board and the charter school shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes."

Section 7. G.S. 115C-238.29H(a) reads as rewritten:

"(a) The State Board of Education shall allocate to each charter school (i) an amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with special needs and (ii) an additional amount for each child attending the charter school who is a child with special needs. In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with special needs leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with special needs enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with special needs.

(al) Funds allocated by the State Board of Education shall not be used to purchase land or buildings, may be used to enter into operational and

financing leases for real property or mobile classroom units for use as school facilities for charter schools and may be used for payments on loans made to charter schools for facilities or equipment. However, State funds shall not be used to obtain any other interest in real property or mobile classroom units. No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions. Every contract or lease into which a charter school enters shall include the previous sentence. The school also may own land and buildings it obtained obtains through non-State sources."

Section 8. G.S. 115C-238.29I(d) reads as rewritten:

"(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a contract, charter, (v) make recommendations concerning grievances between a charter school and its chartering entity, the State Board, or a local board, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board."

Section 9. G.S. 115C-238.29I is amended by adding the following new subsection to read:

"(e) Notwithstanding the dates set forth in this Part, the State Board of Education may establish an alternative time line for the submission of applications, preliminary approvals, criminal record checks, appeals, and final approvals so long as the Board grants final approval by March 15 of each calendar year."

Section 10. G.S. 115C-238.29J(a) reads as rewritten:

"(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units ~~and to contract with those charter schools to provide student transportation units.~~

Section 11. G.S. 135-8(b) reads as rewritten:

"(b) Annuity Savings Fund. -- The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to any payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State, from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five

per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter 135 of Volume 17 of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2, Chapter 135 of Volume 17 of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963, and ending December 31, 1965, the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1975, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

Notwithstanding the foregoing, effective July 1, 1975, with respect to the period of service commencing on July 1, 1975, the

rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Chapter. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation said deduction was made.
- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.
- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the Board of

Trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this Chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959, except as provided for in G.S. 135-4(e).

- (5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This approval shall be made prior to the purchase of the creditable service, is limited to a career total of six years for each member, and may be obtained in the following manner:

- a. Approved leave of absence. -- Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
- b. No educational leave policy. -- Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.
- c. Educational program prior to July 1, 1981. -- Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could

- retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus a fee to be determined by the Board of Trustees.
- d. Employment in a charter school. -- Notwithstanding subparagraph a. of this subdivision, where the employer grants an approved leave of absence for the member to be employed in a charter school or where the member's service is interrupted by employment in a charter school, authorized under Part 6A of Article 16 of Chapter 115C of the General Statutes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

~~Payments required to be made by the member and/or the employer member, the employer, or both~~ under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

(6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this Chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund."

Section 12. The Board of Trustees of the North Carolina Teachers' and State Employees' Retirement System through the Office of the Attorney General shall request a letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, as to whether the status of the North Carolina Teachers' and State Employees' Retirement System as a governmental plan would be adversely affected by the participation of employees of charter schools. The request shall be made to the Internal Revenue Service after it is approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate or their designees and no later than 30 days after the effective date of this act. Employees of charter schools are eligible for participation in the North Carolina Teachers' and State Employees' Retirement System upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling.

Section 13. G.S. 115C-238.29F(e)(4), as amended by Section 5 of this act, is effective on the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, under Section 12 of this act. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1997.

Became law upon approval of the Governor at 2:25 p.m. on the 22nd day of August, 1997.

S.B. 53

CHAPTER 431

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"§ 131D-34. *Penalties; remedies.*

(a) **Violations Classified.** -- The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which ~~creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred,~~ results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

- a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
- b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under subdivision a. of this subdivision; and
- c. Provide a copy of the written confirmation required under subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5000) for each Type A ~~Violation.~~ Violation in

homes licensed for nine or fewer beds. The Department shall impose a civil penalty in an amount not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A Violation in facilities licensed for 10 or more beds.

- (2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create result in substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to two hundred fifty dollars (\$250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.
- (b) Penalties for failure to correct violations within time specified.
 - (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues, continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure ensure that the violation has been corrected.
 - (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department, Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure ensure that the violation has been corrected.
 - (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:
 - a. Has control has received a citation and paid a fine, or
 - b. Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty, penalty

for violating the same specific provision of a statute or regulation for which it received a citation during the previous ~~six months or within the time period of the previous licensure inspection, whichever time period is longer,~~ 12 months. The counting of the ~~six-month~~ 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) The gravity of the violation, including the probability fact that death or serious physical harm to a resident ~~will result or~~ has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;
- (2a) and efforts Efforts by the licensee to correct violations;
- (3) The number and type of previous violations committed by the licensee; licensee within the past 36 months;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

- (1) The penalty review committee;
- (2) The local department of social services who is responsible for oversight of the facility involved;
- (3) The licensee involved;
- (4) The residents affected; and
- (5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. ~~One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department.~~ At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be ~~unreasonable~~, unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be ~~modified~~ adjusted accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

- (1) The cost of training does not exceed one thousand dollars (\$1,000);
- (2) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and
- (3) The training is:
 - a. Specific to the violation;
 - b. Approved by the Department of Human Resources; and
 - c. Taught by someone approved by the Department and other than the provider.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to ~~G.S. 131E-129~~. ~~G.S. 131E-129 as follows:~~ ~~The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term~~

~~care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.~~

(1) The Secretary shall:

- a. Administer the work of the committee;
- b. Ensure provision of departmental staff review;
- c. Evaluate the local departments of social services and the Division of Facility Services' penalty recommendations;
- d. Ensure that recommendations by the Department are complete and submitted within 60 days of receipt of the initial recommendations from the local departments of social services or the Division of Facility Services; and
- e. Provide written copies of all procedures to:
 1. The penalty review committee;
 2. The local department of social services who is responsible for oversight of the facility involved;
 3. The licensee involved;
 4. The residents affected; and
 5. The families or guardians of the residents affected.

(2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

- (1) a. A licensed pharmacist;
- (2) b. A registered nurse experienced in long-term care;
- (3) c. A representative of a nursing home;
- (4) d. A representative of an adult care home; and
- (5) e. Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near' relative is a spouse, sibling, parent, child, grandparent, or grandchild.

(3) Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

(4) Prior to serving on the committee, each member shall complete a training program provided by the Department of Human Resources that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.

(5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused

absences from three consecutive meetings constitute resignation from the Committee."

Section 2. G.S. 131E-129 reads as rewritten:

"§ 131E-129. *Penalties.*

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which ~~creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred, results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur.~~ Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

- a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them and set a date by which the violation must be corrected;
- b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under subdivision a. of this subdivision; and
- c. Provide a copy of the written confirmation required under subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars (\$250.00)~~ nor more than five thousand dollars (\$5,000) five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A Violation.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not ~~create result in~~ substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the ~~date specified for correction~~ time specified in the plan of correction approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or control:

a. ~~Has control~~ has received a citation and paid a fine, or

b. ~~Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,~~ penalty

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 months ~~or within the time period of the previous licensure inspection, whichever time period is longer.~~ months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the ~~probability~~ fact that death or serious physical harm to a resident ~~will result or~~ has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of

the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;

(2a) and efforts Efforts by the licensee to correct violations;

(3) The number and type of previous violations committed by the licensee; licensee within the past 36 months;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;

(2) The local department of social services who is responsible for oversight of the facility involved;

(3) The licensee involved;

(4) The residents affected; and

(5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable, unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be modified adjusted accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section, ~~provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer.~~ section.

(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

- (1) The cost of training does not exceed one thousand dollars (\$1,000);
- (2) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and
- (3) The training is:
 - a. Specific to the violation;
 - b. Approved by the Department of Human Resources; and
 - c. Taught by someone approved by the Department and other than the provider.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations."

Section 3. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 1997.

Became law upon approval of the Governor at 2:27 p.m. on the 22nd day of August, 1997.

H.B. 568

CHAPTER 432

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF WAKE FOREST AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

"(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing city is the Town of Wake Forest."

(b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as rewritten:

"(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the Town of Wake Forest."

Section 1.1 The provisions of G.S. 160A-58.1(b)(5) do not apply to the annexation of the Harry Taylor Farms property by the Town of Beaufort.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of August, 1997.

Became law on the date it was ratified.

H.B. 301

CHAPTER 433

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO ENHANCE CHILD SUPPORT ENFORCEMENT AND PATERNITY ESTABLISHMENT IN CONFORMANCE WITH FEDERAL WELFARE REFORM REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART 1. STATE DIRECTORY OF NEW HIRES.

Section 1. Effective October 1, 1997, Article 1 of Chapter 110 of the General Statutes is amended by adding the following new section to read:

"§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.

(a) Directory Established. -- There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) Employer Reporting. -- Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) Report Contents. -- Each report required by this section shall contain the name, address, and social security number of the employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) Penalties for Failure to Report. -- Upon a finding that an employer has failed to comply with the reporting requirements of this section, the

district court shall impose a civil penalty in an amount not to exceed twenty-five dollars (\$25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars (\$500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) Entry of Report Data Into Directory. -- Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) Notice to Employer to Withhold. -- Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) Other Uses of Directory Information. -- The Employment Security Commission may access information entered into the Directory from employer reports for the purpose of administering employment security programs. The North Carolina Industrial Commission may access information entered into the Directory from employer reports for the purpose of administering workers' compensation programs.

(h) Department May Contract for Services. -- The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. -- Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. -- As used in this section, unless the context clearly requires otherwise, the term:

(1) 'Business day' means a day on which State offices are open for business.

(2) 'Department' means the Department of Human Resources.

(3) 'Employee' means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term 'employee' does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(4) 'Employer' has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term 'labor organization' shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity

which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer."

PART 2. EXPANDED AUTHORITY OF THE DEPARTMENT TO ENFORCE CHILD SUPPORT ORDERS AND TO ESTABLISH PATERNITY.

Section 2. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"§ 110-129.1. Additional powers and duties of the Department.

(a) In addition to other powers and duties conferred upon the Department of Human Resources, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

- (1) Upon authorization of the Secretary, to issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the Secretary and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina. Return of the subpoena shall be to the person who issued the subpoena. Upon the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the district court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Child Support Enforcement Program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding.
- (2) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency in this State for law enforcement purposes, as permitted pursuant to G.S. 132-1.4, except that the Program shall have access to information available to the law enforcement agency

pertaining to drivers licenses and motor vehicle registrations issued in other states.

- (3) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the State may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges.
- (4) Develop procedures for entering into agreements with financial institutions to develop and operate a data match system as provided under G.S. 110-139.2.
- (5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Department, enrolls the child in the employer's health care plan.
- (6) Develop and implement an administrative process for paternity establishment in accordance with G.S. 110-132.2.
- (7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed, in accordance with G.S. 50-13.4(d).
- (8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:
 - a. Subpoena the parties to undergo genetic testing as provided under G.S. 110-132.2;
 - b. Implement income withholding in accordance with this Chapter;
 - c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under G.S. 110-136.4, or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of G.S. 110-136.6;
 - d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions in this State without the necessity for additional filing by the petitioner or service of process upon the respondent.

(b) As used in this section, the term 'Secretary' means the Secretary of Human Resources, the Secretary's designee, or a designated representative as defined under G.S. 110-129(5)."

Section 2.1. (a) G.S. 50-13.4(d) reads as rewritten:

"(d) ~~Payments~~ In non-IV-D cases, ~~payments~~ for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the court,

for the benefit of such the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the court or other proper State agency for the benefit of the child."

(b) This section applies to orders entered or modified on and after October 1, 1997.

Section 2.2. G.S. 50-13.4 is amended by adding the following new subsection to read:

"(e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer."

PART 2A. NOTICE/DUE PROCESS REQUIREMENTS.

Section 2.3. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"§ 110-131.1. *Notice; due process requirements met.*

In any child support enforcement proceeding the trial court may deem State due process requirements for notice and service of process to be met with respect to the nonmoving party, upon delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure with respect to all pleadings subsequent to the original complaint."

PART 3. AUTHORIZE JUDGES TO IMPOSE WORK REQUIREMENTS ON OBLIGORS WHO ARE IN ARREARS IN CHILD SUPPORT, AND TO REQUIRE PARENTS TO PROVIDE MEDICAL SUPPORT.

Section 3. G.S. 110-136.3 is amended by adding the following new subsection to read:

"(a1) **Payment Plan/Work Requirement for Past-Due Support.** In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under 42 U.S.C. § 607, as the court deems appropriate."

Section 3.1. G.S. 50-13.11 reads as rewritten:

"§ 50-13.11. *Orders and agreements regarding medical support and health insurance coverage for minor children.*

(a) The court may order a parent of a minor child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. ~~An order or~~

~~agreement for medical support may require one or both parties to maintain health insurance, dental insurance, or both, or to pay the medical, hospital, or dental expenses. An order or agreement for medical support for the child may require one or both parties to pay the medical, hospital, dental, or other health care related expenses.~~

(a) The court shall order the parent of a minor child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism. The court may require one or both parties to maintain dental insurance.

(b) The party ordered or under agreement to provide ~~medical~~ health insurance shall provide written notice of any change in the applicable insurance coverage to the other party.

(c) The employer or insurer of the party required to provide ~~medical, health, hospital, and dental~~ insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide ~~medical, health, hospital, and dental~~ insurance.

(d) When a court order or agreement for ~~medical health~~ insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.

(e) If the party who is required to provide ~~medical health~~ insurance fails to maintain the insurance coverage for the minor child, the party shall be liable for any ~~medical, health, hospital, or dental~~ expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force.

(f) When a noncustodial parent ordered to provide health insurance changes employment and health insurance coverage is available through the new employer, the obligee shall notify the new employer of the noncustodial parent's obligation to provide health insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll the child in the employer's health insurance plan."

Section 3.2. G.S. 108A-69(b) reads as rewritten:

"(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an employer doing business in this State, the employer:

- (1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.
- (2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Human Resources in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.
- (3) May not disenroll or eliminate coverage of the child unless:

- a. The employer is provided satisfactory written evidence that:
 - 1. The court or administrative order is no longer in effect; or
 - 2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or
 - b. The employer has eliminated family health benefit plan coverage for all of its employees.
- (4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

PART 3A. CONFORM STATE TAX INTERCEPT LAW TO FEDERAL REQUIREMENTS.

Section 3.3. G.S. 105A-2(1)d. reads as rewritten:

- "d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support ~~arrears~~ owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;".

PART 4. REQUIREMENT TO PROVIDE SOCIAL SECURITY NUMBERS ON CERTAIN DOCUMENTS.

Section 4. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following information:

- (1) The applicant's full name.
- (2) The applicant's mailing address and residence address.
- (3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
- (4) The applicant's date of birth.
- (5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's

social security number. The applicant's social security number shall not be printed on the license and may be released only to the Department of Human Resources, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.

(6) The applicant's signature.

The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. ~~405(c)(2)(C)(v)~~, 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under this subsection only for the purpose of administering the drivers license laws or to assist the State Child Support Enforcement Program in establishing paternity or establishing or enforcing child support and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. ~~405(c)(2)(C)(vii)~~, 408, and amendments thereto."

Section 4.1. G.S. 49-7 reads as rewritten:

"§ 49-7. *Issues and orders.*

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to provide adequate support and maintain the child who is the subject of the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the child, subject to the limitations of G.S. 50-13.10. The amount of child support shall be determined as provided in G.S. 50-13.4(c). The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. The social security number, if known, of the minor child's parents shall be placed in the record of the proceeding. Compliance by the defendant with any or all of the further provisions of this Article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof.

The court before whom the matter may be brought, on motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist or other duly qualified person. The

evidentiary effect of those blood tests and comparisons and the manner in which the expenses therefor are to be taxed as costs shall be as prescribed in G.S. 8-50.1. In addition, if a jury tries the issue of parentage, they shall be instructed as set out in G.S. 8-50.1. From a finding on the issue of parentage against the alleged-parent defendant, the alleged-parent defendant has the same right of appeal as though he or she had been found guilty of the crime of willful failure to support an illegitimate child."

Section 4.2. G.S. 49-14(a) reads as rewritten:

"(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A certified copy of a certificate of birth of the child shall be attached to the complaint. Such The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

Section 4.3. G.S. 50-8 reads as rewritten:

"§ 50-8. *Contents of complaint; verification; venue and service in action by nonresident; certain divorces validated.*

In all actions for divorce the complaint shall be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth in his or her complaint that the complainant or defendant has been a resident of the State of North Carolina for at least six months next preceding the filing of the complaint, and that the facts set forth therein as grounds for divorce, except in actions for divorce from bed and board, have existed to his or her knowledge for at least six months prior to the filing of the complaint: Provided, however, that if the cause for divorce is one-year separation, then it shall not be necessary to allege in the complaint that the grounds for divorce have existed for at least six months prior to the filing of the complaint; it being the purpose of this proviso to permit a divorce after such separation of one year without awaiting an additional six months for filing the complaint: Provided, further, that if the complainant is a nonresident of the State action shall be brought in the county of the defendant's residence, and summons served upon the defendant personally or service of summons accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1). Notwithstanding any other provision of this section, any suit or action for divorce heretofore instituted by a nonresident of this State in which the defendant was personally served with summons or in which the defendant personally accepted service of the summons and the case was tried and final judgment entered in a court of this State in a county other than the county of the defendant's residence, is hereby validated and declared to be legal and proper, the same as if the suit or action for divorce had been brought in the county of the defendant's residence.

In all divorce actions the complaint shall set forth the name and age of any minor child or children of the marriage, and in the event there are no such minor children of the marriage, the complaint shall so state. In addition, when there are minor children of the marriage, the complaint shall state the social security number of the plaintiff and, if known, the social security number of the defendant.

In all prior suits and actions for divorce heretofore instituted and tried in the courts of this State where the averments of fact required to be contained in the affidavit heretofore required by this section are or have been alleged and set forth in the complaint in said suits or actions and said complaints have been duly verified as required by Rule 11 of the Rules of Civil Procedure, said allegations so contained in said complaints shall be deemed to be, and are hereby made, a substantial compliance as to the allegations heretofore required by this section to be set forth in any affidavit; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce.

In all suits and actions for divorce heretofore instituted and tried in this State on and subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in the verification to the complaint in said suits or actions are not in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of this section as to verification of complaint or the allegations, statements or averments in the verification contain the language that the facts set forth in the complaint are true 'to the best of affiant's knowledge and belief' instead of the language 'that the same is true to his (or her) own knowledge' or similar variation in language, said allegations, statements and averments in said verifications as contained in or attached to said complaint shall be deemed to be, and are hereby made, a substantial compliance as to the allegations, averments or statements required by this section to be set forth in any such verifications; and all such suits or actions for divorce, as well as the judgments or decrees issued and entered as a result thereof, are hereby validated and declared to be legal and proper judgments and decrees of divorce. The judgment of divorce shall include, where there are minor children of the parties, the social security numbers of the parties."

Section 4.4. G.S. 50-13.4 is amended by adding the following new subsections to read:

"(g) An individual who brings an action or motion in the cause for the support of a minor child, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number. The child support order shall contain the social security number of the parties as evidenced in the support proceeding.

(h) Child support orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Human Resources, Child Support Enforcement Program, on a timely basis, the information required to be included on orders under this subsection."

Section 4.5. G.S. 51-8 reads as rewritten:

"§ 51-8. License issued by register of deeds.

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that such persons are authorized to be married in accordance with the laws of this State. In

making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 4.6. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"§ 93B-14. Information on applicants for licensure."

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only to the State Child Support Enforcement Program of the Department of Human Resources upon its request and for the purpose of enforcing a child support order."

PART 4A. PATERNITY ESTABLISHMENT PROCEEDINGS.

Section 4.7. G.S. 110-132(a) reads as rewritten:

"§ 110-132. Acknowledgment of paternity and agreement to support."

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of paternity, subject to the right of either signatory to rescind within the earlier of:

- (1) 60 days of the date the document is executed, or
- (2) The date of entry of an order establishing paternity or an order for the payment of child support.

~~and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a~~

In order to rescind, a challenger must request the district court to order the rescision and to include in the order specific findings of fact that the request for rescision was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescision and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescision to the State Registrar of Vital Statistics. Upon receipt of an order of rescision, the State Registrar shall remove the putative father's

name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support said the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Such The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether he the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. Such The mother shall not be excused from making such the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation."

Section 4.8. G.S. 110-133 reads as rewritten:

"§ 110-133. Agreements of support.

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, a written agreement to support the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the custodial parent of the child resides or is found, or in the county where the noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement, as an order of

support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number."

Section 4.9. G.S. 49-12.1(c) reads as rewritten:

"(c) The parties may ~~waive a jury trial and~~ enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child."

Section 4.10. G.S. 49-14 is amended by adding the following new subsections to read:

"(f) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(g) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child."

Section 4.11. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"§ 110-132.2. Expedited procedures to establish paternity in IV-D cases.

(a) In a IV-D court action, a local child support enforcement office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b) A person subpoenaed to submit to testing pursuant to subsection (a) of this section may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the county where the local child support enforcement office that issued the subpoena is located. The hearing shall be before the district court and notice of the hearing must be served by the petitioner on all parties to the proceeding. Service shall be in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena to undergo testing.

If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation."

Section 4.12. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

- (1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;
- (2) A sworn statement by the father declaring that he believes he is the natural father of the child;
- (3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
- (4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate and shall be presumed to be the natural father of the ~~child~~, child, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. A certified copy of the affidavit shall be admissible in any action to establish paternity. ~~The presumption of paternity arising under this section may be rebutted in a legal action only by clear, cogent, and convincing evidence.~~ The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

PART 5. SUSPENSION/REVOCAION OF LICENSES FOR FAILURE TO COMPLY WITH SUBPOENA ISSUED PURSUANT TO CHILD SUPPORT OR PATERNITY ESTABLISHMENT PROCEEDINGS.

Section 5. The catch line to G.S. 110-142 reads as rewritten:

"§ 110-142. *Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support, support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.*"

Section 5.1. G.S. 110-142.1 reads as rewritten:

"§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support, or who are not in compliance with subpoenas issued pursuant to child support or paternity establishment proceedings.

(a) Effective July 1, 1996, the Department of Human Resources may notify any board that a person licensed by that board is not in compliance with an order for child support, support or has been found by the court not to be in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings.

(b) The designated representative shall maintain a list of those obligors included in a IV-D case for which a child support order has been rendered by, or registered in, a court of this State, and who are not in compliance with that order. The designated representative shall submit a certified list with the names, social security numbers, and last known address of these obligors and the name, address, and telephone number of the person who certified the list to the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, individuals who are not in compliance with a child support order or with a subpoena issued pursuant to a child support or paternity establishment proceeding. The designated representative shall verify, under penalty of perjury, that the obligors individuals listed are subject to an order for the payment of support and that these persons are not in compliance with the order, order, or have been found by the court to be not in compliance with a subpoena issued pursuant to a child support or paternity establishment proceeding. The verification shall include the name, address, and telephone number of the designated representative who certified the list. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Human Resources, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of its obligors, the individuals, as specified in this section.

(c) Each board shall coordinate with the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of obligors individuals from the Department of Human Resources, each board shall determine whether its applicant or licensee is an obligor individual on the list. If the applicant or licensee is an obligor on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the obligor's individual's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the ~~obligor's individual's~~ license 20 days from the date of the notice to the ~~obligor individual~~ of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the ~~obligor individual~~.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Human Resources and shall be subject to the approval of the Department of Human Resources. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the ~~obligor individual~~ that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the ~~obligor individual~~. The Department of Human Resources shall also develop a form that the ~~obligor individual~~ shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Human Resources shall establish review procedures consistent with this section to allow an ~~obligor individual~~ to have the underlying arrearage and any relevant defenses investigated, to provide an ~~obligor individual~~ information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an ~~obligor individual~~ assistance in the establishment of a payment schedule on arrears.

(h) If the ~~obligor individual~~ wishes to challenge the submission of the ~~obligor's individual's~~ name on the certified list, or if the ~~individual~~ wishes to negotiate a payment schedule, the ~~obligor individual~~ shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the ~~obligor's~~ request for review notify the appropriate board of the ~~obligor's~~ request for review and direct the board to stay any action revoking or suspending the ~~obligor's individual's~~ license until further notice from the designated representative. The designated representative shall review the ~~obligor's~~ case and inform the ~~obligor individual~~ in writing of the representative's findings and decision upon completion of the review. ~~The If the findings so warrant, the designated representative shall immediately send a notice to the appropriate board certifying the obligor's individual's compliance with this section if the obligor is found to be no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement.~~ section. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the ~~obligor individual~~ fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the ~~obligor's~~

individual's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the obligor's individual's license.

(i) The designated representative shall notify the obligor individual in writing that the obligor individual may, by filing a motion, request any or all of the following:

- (1) Judicial review of the designated representative's decision.
- (2) A judicial determination of compliance.
- (3) A modification of the support order.

The notice shall also contain the name and address of the court in which the obligor individual shall file the motion and inform the obligor individual that the obligor's individual's name shall remain on the certified list unless the judicial review results in a finding by the court that the obligor is no longer in arrears or that the obligor's license should be reinstated under subsection (k) of this the individual is in compliance with this section. The notice shall also inform the obligor individual that the obligor individual must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the obligor individual upon the designated representative who submitted the obligor's individual's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the obligor individual is no longer in arrears or that the obligor's individual's license should be reinstated to allow the obligor individual an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the obligor's individual's compliance with this section. In the event of appeal from the judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise. If the judicial review results in a finding that the individual has complied with or is no longer subject to the subpoena that was the basis for the revocation, then the designated representative shall immediately send a notice to the appropriate board certifying the individual's compliance with this section. In the event of an appeal from judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Human Resources shall prescribe forms for use by the designated representative. When the obligor individual is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement as provided in subsection (h) of this section, the designated representative shall mail to the obligor individual and the appropriate board a notice certifying that the obligor

individual is in compliance. The receipt of certification shall serve to notify the ~~obligor~~ individual and the board that, for the purposes of this section, the ~~obligor~~ individual is in compliance with the order for support. When the individual has complied with or is no longer subject to a subpoena issued pursuant to a child support or paternity establishment proceeding, the designated representative shall mail to the individual and the appropriate board a notice certifying that the individual is in compliance. The receipt of certification shall serve to notify the individual and the board that the individual is in compliance with this section.

(m) The Department of Human Resources may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable."

Section 5.2. G.S. 110-142.2 reads as rewritten:

"§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an ~~obligor~~ individual is at least 90 days in arrears in making child support payments, or has been found by the court to be not in compliance with a subpoena issued pursuant to child support or paternity establishment proceedings, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

- (1) Revoking the ~~obligor's~~ individual's regular or commercial license to operate a motor vehicle;
- (2) Revoking the ~~obligor's~~ individual's hunting, fishing, or trapping licenses;
- (3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the ~~obligor's~~ individual's motor vehicle.

(b) Upon finding that the ~~obligor~~ individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as

provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the ~~obligor~~ individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the ~~obligor's~~ individual's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the ~~obligor's~~ individual's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An ~~obligor~~ individual whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An ~~obligor~~ individual may file a request with the child support enforcement agency for certification that the ~~obligor~~ individual is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the ~~obligor~~ individual has paid the delinquent amount in full. An individual subject to a subpoena issued pursuant to a child support or paternity establishment proceeding may file a request with the child support enforcement agency for certification that the individual has complied with or is no longer subject to the subpoena. The child support enforcement agency shall provide a form to be used by the ~~obligor~~ individual for a request for certification. If the child support enforcement agency finds that the ~~obligor~~ individual has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer delinquent or that the individual has complied with or is no longer subject to a subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the ~~obligor~~ individual.

(e) If licensing privileges are revoked under this section, the ~~obligor~~ individual may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over ~~time~~, time, or, as applicable, may order the reinstatement if the court finds that the individual has complied with or is no longer subject to the subpoena issued pursuant to paternity establishment proceedings. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the child support enforcement agency shall certify that the ~~obligor~~ individual is no longer delinquent

delinquent, or, as applicable, that the individual has complied with or is no longer subject to the subpoena issued pursuant to child support or paternity establishment proceedings and shall provide a copy of the certification to the obligor, individual, as applicable.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the obligor's individual's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the obligor's individual's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the obligor individual violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the obligor's individual's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Human Resources, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment, Health, and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process."

Section 5.3. G.S. 50-13.12 reads as rewritten:

"§ 50-13.12. Forfeiture of Licensing Privileges for Failure to Pay Child Support. licensing privileges for failure to pay child support or for failure to comply with subpoena issued pursuant to child support or paternity establishment proceedings.

(a) As used in this section, the term:

- (1) 'Licensing board' means a department, division, agency, officer, board, or other unit of state government that issues hunting, fishing, trapping, drivers, or occupational licenses or licensing privileges.
- (2) 'Licensing privilege' means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.
- (3) 'Obligee' means the individual or agency to whom a duty of support is owed or the individual's legal representative.
- (4) 'Obligor' means the individual who owes a duty to make child support payments under a court order.
- (5) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession.

(b) Upon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, or upon a finding that a person has willfully failed to comply with a subpoena issued pursuant to a child support or paternity establishment

proceeding, and upon findings as to any specific licensing privileges held by the obligor, obligor or held by the person subject to the subpoena, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in full, full, or, as applicable, until the person subject to the subpoena has complied with the subpoena. The court may stay any such revocation pertaining to the obligor upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. The court may stay the revocation pertaining to the person subject to the subpoena upon a finding that the person has complied with or is no longer subject to the subpoena. Upon an order revoking such privileges of an obligor that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the obligor is no longer delinquent in child support payments. Upon an order revoking such privileges of a person subject to the subpoena that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the person has failed to comply with the subpoena issued pursuant to a child support or paternity establishment proceeding and that the person's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the person is in compliance with or no longer subject to the subpoena.

(c) An obligor may file a request with the clerk of superior court for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the clerk that the obligor has paid the delinquent amount in full. A person whose licensing privileges have been revoked under subsection (b) of this section because of a willful failure to comply with a subpoena may file a request with the clerk of superior court for certification that the person has met the requirements of or is no longer subject to the subpoena. The clerk shall provide a form to be used by the obligor for a request for certification. If the clerk finds that the obligor has met the requirements for reinstatement under this subsection, then the clerk shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. If the clerk finds that the person whose licensing privileges have been revoked under subsection (b) of this section for failure to comply with a subpoena has complied with or is no longer subject to the subpoena, then the clerk shall certify that the person has met the requirements of or is no longer subject to the subpoena and shall provide a copy of the certification to the person. Upon request of the person, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall

additionally require the obligor's maintenance of current child support. If the licensing privileges of a person other than the obligor are revoked under this section for failure to comply with a subpoena, the person may petition the district court for reinstatement of the privileges. The court may order the privileges reinstated if the person has complied with or is no longer subject to the subpoena that was the basis for revocation. Upon reinstatement under this subsection, the clerk of superior court shall certify that the obligor is no longer delinquent and provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon reinstatement of the person whose licensing privileges were revoked based on failure to comply with a subpoena, the clerk of superior court shall certify that the person has complied with or is no longer subject to the subpoena. Upon request of the person whose licensing privileges are reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) The obligor ~~An obligor or other person whose licensing privileges are reinstated under this section may provide a copy of the certification set forth in either subsection (c) or (d) to each licensing agency to which the obligor or other person applies for reinstatement of licensing privileges. Upon request of the obligor,~~ obligor or other person, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that the obligor's an obligor's or other person's licensing privileges are revoked, revoked pursuant to this section, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation pertaining to an obligor shall remain in full force and effect until the board receives certification under this section that the obligor is no longer delinquent in child support payments. The revocation pertaining to the person whose licensing privileges were revoked on the basis of failure to comply with a subpoena shall remain in full force and effect until the board receives certification of reinstatement under subsection (d) of this section."

Section 5.4. G.S. 93B-13 reads as rewritten:

"§ 93B-13. Revocation when licensing privilege forfeited for nonpayment of child support. ~~support or for failure to comply with subpoena.~~

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court that the licensee is no longer delinquent in child support payments. payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Human Resources that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support ~~payments~~. payments, or, as applicable, that the licensee is in compliance with or no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

PART 6. INCOME WITHHOLDING.

Section 6. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

- (1) Withhold from the obligor's disposable income and, within 10 7 business days of the date the obligor is paid, send to the clerk of superior court or State collection and disbursement unit, as specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;
- (2) Continue withholding until further notice from the IV-D agency or agency, the clerk of superior court; court, or the State collection and disbursement unit;

- (3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;
- (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
- (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State collection and disbursement unit in a non-IV-D case, in writing:
 - a. If there is more than one child support withholding for the obligor;
 - b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
 - c. Of the payor's inability to comply with the withholding for any reason; and
- (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

PART 6A. EXPEDITED PROCEDURES FOR INCOME WITHHOLDING.

Section 6.1. G.S. 110-136.3(b) reads as rewritten:

"(b) When obligor subject to withholding.

- (1) In IV-D cases in which a new or modified child support order is entered on or after October 1, 1989, an obligor is subject to income withholding immediately upon entry of the order. In IV-D cases in which the child support order was entered prior to October 1, 1989, an obligor shall become subject to income withholding on the earliest of:
 - a. ~~The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; month, or~~
 - b. ~~The the date on which the obligor or obligee requests withholding.~~
- (2) In non-IV-D cases in which the child support order was entered prior to January 1, 1994, an obligor shall be subject to income withholding on the earliest of:
 - a. The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; ~~or~~
 - b. The date on which the obligor requests withholding; or
 - c. The date on which the court determines, pursuant to a motion or independent action filed by the obligee under G.S. 110-136.5(a), that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.
- (3) In IV-D child support cases in which an order was issued or modified in this State prior to October 1, 1996, and in which the

obligor is not otherwise subject to withholding, the obligor shall become subject to withholding if the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month."

Section 6.2. G.S. 110-136.4(a)(2) reads as rewritten:

- "(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:
- a. Whether the proposed withholding is based on the obligor's failure to make legally obligated payments in an amount equal to the support payable for one ~~month or month~~, on the obligor's request for ~~withholding or withholding~~, on the obligee's request for ~~withholding~~; withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);
 - b. The amount of overdue support, the total amount to be withheld, and when the withholding will occur;
 - c. The name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child;
 - d. The amount and sources of disposable income;
 - e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
 - f. An explanation of the obligor's rights and responsibilities pursuant to this section;
 - g. That withholding will be continued until terminated pursuant to G.S. 110-136.10."

PART 7. ESTABLISHMENT OF A LIEN ON REAL AND PERSONAL PROPERTY OF PERSON OWING PAST-DUE CHILD SUPPORT.

Section 7. Chapter 44 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 15.

"Liens for Overdue Child Support.

"§ 44-86. Lien on real and personal property of person owing past-due child support; definitions; filing required; discharge.

(a) Definitions. As used in this Article, the terms 'designated representative', 'obligee', and 'obligor' have the meanings given them in G.S. 110-129.

(b) Lien Created. There is created a general lien upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. For purposes of this section, an obligor is delinquent when arrears under a court-ordered child support obligation equals three months of payments or three thousand dollars (\$3,000), whichever occurs first. The amount of the lien shall be determined by a verified statement of child support delinquency prepared in accordance with subsection (c) of this section.

(c) Contents of Statement; Verification. A verified statement of child support delinquency shall contain the following information:

- (1) The caption and file docket number of the case in which child support was ordered;
- (2) The date of the order of support;
- (3) The amount of the child support obligation established by the order; and
- (4) The amount of the arrearage as of the date of the statement.

The statement shall be verified by the designated representative in a IV-D case and by the obligee in a non-IV-D case.

(d) Filing and Perfection of Lien. The verified statement shall be filed in the office of the clerk of superior court in the county in which the child support was ordered. At the time of filing the verified statement, the designated representative in a IV-D case and the obligee in a non-IV-D case shall serve notice on the obligor that the statement has been filed. The notice shall be served and the return of service filed with the clerk of court in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall specify the manners in which the lien may be discharged. Upon perfection of the lien, as set forth herein, the clerk shall docket and index the statement on the judgment docket. The clerk shall issue a transcript of the docketed statement to the clerk of any other county as requested by the designated representative in a IV-D case or the obligee in a non-IV-D case. The clerk receiving the transcript shall docket and index the transcript. A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment docket.

- (1) IV-D Cases. In IV-D cases, the filing of a verified statement with the clerk of court by the designated representative shall perfect the lien. The obligor may contest the lien by motion in the cause.
- (2) Non-IV-D Cases. In a non-IV-D case, the notice to the obligor of the filing of the verified statement shall state that the obligor has 30 days from the date of service to request a hearing before a district court judge to contest the validity of the lien. If the obligor fails to contest the lien after 30 days from the time of service, the obligee may make application to the clerk, and the clerk shall record and index the lien on the judgment docket. If the obligee files a petition contesting the validity of the lien, a hearing shall be held before a district court judge to determine whether the lien is valid and proper. In contested cases, the clerk of court shall record and index the lien on the judgment docket only by order of the judge. The docketing of a verified statement in a non-IV-D case shall perfect the lien when duly recorded and indexed.

(e) Lien Superior to Subsequent Liens. Except as otherwise provided by law, a lien established in accordance with this section shall take priority over all other liens subsequently acquired and shall continue from the date of filing until discharged in accordance with G.S. 44-87.

(f) Execution on the Lien. A designated representative in a IV-D case, after 30 days from the docketing of the perfected lien, or an obligee in a

non-IV-D case, after docketing the perfected lien, may enforce the lien in the same manner as for a civil judgment.

(g) Liens Arising Out-of-State. This State shall accord full faith and credit to child support liens arising in another state when the child support enforcement agency, party, or other entity seeking to enforce the lien complies with the requirements relating to recording and serving child support liens as set forth in this Article and with the requirements relating to the enforcement of foreign judgments as set forth in Chapter 1C of the General Statutes.

"§ 44-87. Discharge of lien; penalty for failure to discharge.

(a) Liens created by this Article may be discharged as follows:

- (1) By the designated representative in IV-D cases, or by the obligee in non-IV-D cases, filing with the clerk of superior court an acknowledgment that the obligor has satisfied the full amount of the lien;
- (2) By depositing with the clerk of superior court money equal to the amount of the claim and filing a petition in the cause requesting a district court judge to determine the validity of the lien. The money shall not be disbursed except by order of a district court judge following the hearing on the merits; or
- (3) By an entry in the judgment docket book that the action on the part of the lien claimant to enforce the lien has been dismissed, or a judgment has been rendered against the claimant in such action.

(b) An obligee in a non-IV-D case who has received payment in full for a delinquent child support obligation which is the basis for the lien shall, within 30 days of receipt of payment, file with the clerk of court an acknowledgment that the obligor has satisfied the full amount of the lien and that the lien is discharged. If the lienholder fails to timely file the acknowledgment, the obligor may, after serving notice on the obligee, file an action in district court to discharge the lien. If in an action filed by the obligor to discharge the lien, the court discharges the lien and finds that the obligee failed to timely file an acknowledgment discharging the lien, then the court may allow the prevailing party to recover reasonable attorneys' fees to be taxed as court costs against the obligee."

Section 7.1. G.S. 50-13.4(f)(8) reads as rewritten:

- "(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments."

PART 8. DEPARTMENT OF HUMAN RESOURCES TO DEVELOP AUTOMATED DATA PROCESSING AND INFORMATION SYSTEM, AND CENTRALIZED COLLECTION AND DISBURSEMENT SYSTEM FOR THE ENHANCEMENT OF CHILD SUPPORT COLLECTION AND DISBURSEMENT.

Section 8. (a) **Automated System.** The Department of Human Resources shall develop a single statewide automated data processing and information retrieval system to enhance enforcement of child support obligations. The system shall have the capability to perform the following tasks:

- (1) Program management, including the controlling and accounting for use of federal, State, and local funds in carrying out the State child support enforcement program, and maintaining the data necessary to meet federal reporting requirements on a timely basis;
- (2) Maintenance of requisite data on State performance with respect to paternity establishment and child support enforcement, including systems controls to ensure completeness and reliability of and ready access to this data;
- (3) Establishment of safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the system. Safeguards shall include policies restricting, controlling, and monitoring access to the system and database;
- (4) Maintenance of the State's automated case tracking system (ACTS) in accordance with federal requirements;
- (5) Information retrieval, comparisons, and disclosure, including the sharing and comparison of information from other databases and information comparison services. Comparison services shall include information retrieval and sharing with such databases as the Federal Case Registry of Child Support Orders, the Federal Parent Locator Service, temporary family assistance and Medicaid agencies, and other agencies of this State and agencies of other states and interstate information networks;
- (6) Collection and distribution of support payments through the State Collection Disbursement Unit as required by federal law; and
- (7) Implement expedited administrative procedures for the establishment of paternity and the enforcement of child support orders.

In addition, the system shall include procedures to ensure that all personnel who have access to confidential program data are trained in and informed of applicable requirements and penalties. The Department shall impose administrative penalties authorized by State law for unauthorized access to or disclosure or use of confidential data in the system.

(b) **Progress Reports on Development.** The Department shall provide periodic written progress reports to the Cochairs of the House and Senate Appropriations subcommittees on Human Resources, and to the Fiscal Research Division, not later than October 1, 1997, March 1, 1998, and October 1, 1998. Information contained in the report shall include, but not be limited to:

- (1) Federal requirements for the automated system and collection and disbursements units;
- (2) Status of development of the automated system and collection and disbursement unit as of the date of the progress report, and whether the development plan is on schedule, behind schedule, or ahead of schedule, and the reasons therefor;

- (3) Projected costs to develop and operate the automated system; and projected savings, if any, from full implementation of the system;
- (4) Projected costs to develop and operate the collection and disbursement unit, including recommendations on whether the Department should operate the unit or whether it should be operated by an outside contractor;
- (5) The amount of State funds that must be appropriated for the 1998-99 fiscal year to develop and implement the collection and disbursement unit; and
- (6) Other information requested by the Cochairs or that the Department considers relevant and useful.

Section 8.1. Effective October 1, 1999, G.S. 110-139 is amended by adding the following new subsection to read:

"(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for:

- (1) All IV-D cases, and
- (2) All non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding.

The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit."

Section 8.2. G.S. 110-139.1(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the The parent locator service of the Department of Human Resources shall transmit, upon payment of the fee prescribed by federal law, requests for information as to the whereabouts of any ~~absent~~ parent or child to the federal parental locator service when such requests are made by judges, clerks of superior court, district attorneys, or United States attorneys, and when the information is to be used to locate the parent or child for the purpose of enforcing State or federal law with respect to to:

- (1) the The unlawful taking or restraint of a child child;
- (2) or ~~making~~ Making or enforcing a child custody determination, including visitation orders;
- (3) Establishing paternity; or
- (4) Establishing, setting or modifying the amount of, or enforcing child support obligations.

The Department shall not disclose any information from or through the parent locator service if there is reasonable evidence of domestic violence or child abuse and the disclosure of the information could be harmful to the custodial parent or the child of the custodial parent."

PART 9. FINANCIAL INSTITUTIONS/DATA MATCH SYSTEM.

Section 9. Chapter 110 of the General Statutes is amended by adding the following new section to read:

"§ 110-139.2. Data match system; agreements with financial institutions.

(a) The Department of Human Resources and financial institutions doing business in this State shall enter into mutual agreements for the purpose of

facilitating the enforcement of child support obligations. The agreements shall provide for the development and operation of a data match system that will enable the financial institutions to provide to the Department on a quarterly basis the information required under G.S. 110-139(d). Financial institutions shall provide the information upon certification by the Department that the person about whom the information is requested is subject to a child support order and the information is necessary to enforce the order. The Department may pay a reasonable fee to the financial institution for conducting the data match required under this section provided that the fee shall not exceed the actual costs incurred by the financial institution to conduct the match.

(b) A financial institution shall not be liable under any State law, including but not limited to Chapter 53B of the General Statutes, for disclosure of information to the State child support agency under this section, and for any other action taken by the financial institution in good faith to comply with this section or with G.S. 110-139.

(c) As used in this subdivision, a financial institution includes federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State."

Section 9.1. G.S. 110-139(d) reads as rewritten:

"(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility company company, cable television company, or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Human Resources with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company company, cable television company, or financial institution. A utility company company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure."

PART 10. AMEND UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA).

Section 10. G.S. 52C-1-101 reads as rewritten:

"§ 52C-1-101. *Definitions.*

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) 'Child' means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- (2) 'Child support order' means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
- (3) 'Duty of support' means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
- (4) 'Home state' means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.
- (5) 'Income' includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.
- (6) 'Income-withholding order' means an order or other legal process directed to a payer of income to withhold support from the income of the obligor.
- (7) 'Initiating state' means a state ~~in from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state~~ under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state. Act.
- (8) 'Initiating tribunal' means the authorized tribunal in an initiating state.
- (9) 'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage.
- (10) 'Issuing tribunal' means the tribunal that issues a support order or renders a judgment determining parentage.
- (11) 'Law' includes decisional and statutory law and rules and regulations having the force of law.
- (12) 'Obligee' means:
 - a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
 - b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
 - c. An individual seeking a judgment determining parentage of the individual's child.
- (13) 'Obligor' means an individual, or the estate of a decedent;

- a. Who owes or is alleged to owe a duty of support;
 - b. Who is alleged but has not been adjudicated to be a parent of a child; or
 - c. Who is liable under a support order.
- (14) 'Register' means to file a support order or judgment determining paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.
- (15) 'Registering tribunal' means a tribunal in which a support order is registered.
- (16) 'Responding state' means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this Act or a law or procedure substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
- (17) 'Responding tribunal' means the authorized tribunal in a responding state.
- (18) 'Spousal-support order' means a support order for a spouse or former spouse of the obligor.
- (19) 'State' means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term 'state' includes:
- a. An Indian tribe; and ~~includes~~
 - b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this Chapter. Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
- (20) 'Support enforcement agency' means a public official or agency authorized to seek:
- a. Enforcement of support orders or duties of ~~support~~ support;
 - b. to seek establishment Establishment or modification of child support, support;
 - c. to seek determination Determination of paternity, parentage; or
 - d. to To locate obligors or their assets.
- (21) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrears, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.
- (22) 'Tribunal' means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division."

Section 10.1. G.S. 52C-2-203 reads as rewritten:

"§ 52C-2-203. *Initiating and responding tribunal of this State, state.*

Under this Chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state."

Section 10.2. G.S. 52C-2-205 reads as rewritten:

"§ 52C-2-205. *Continuing, exclusive jurisdiction.*

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until ~~each individual party has all of the parties who are individuals have filed written consent~~ consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) Enforce nonmodifiable aspects of that order; and

(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this Chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

Section 10.3. (a) The title of Part 3 of Article 2 of Chapter 52C of the General Statutes reads as rewritten:

"Part 3. ~~Reconciliation With Orders of Other States.~~ of Multiple Orders."

(b) G.S. 52C-2-207 reads as rewritten:

"§ 52C-2-207. *Recognition of controlling child support orders.* order.

~~(a) If a proceeding is brought under this Chapter, and one or more child support orders have been issued in this or another state with regard to an~~

~~obligor and a child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:~~

- ~~(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~
- ~~(2) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal must be recognized.~~
- ~~(3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.~~
- ~~(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State may issue a child support order, which must be recognized.~~

~~(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction.~~

~~(a) If a proceeding is brought under this Chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.~~

~~(b) If a proceeding is brought under this Chapter, and two or more child support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:~~

- ~~(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal controls and must be so recognized.~~
- ~~(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.~~
- ~~(3) If none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.~~

~~(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order~~

in effect. The requesting party shall give notice of the request to each party whose rights may be affected by a certified copy of every support order in the effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under G.S. 52C-2-205.

(e) A tribunal of this State which determines by order the identity of the controlling order under subdivision (b)(1) or (2) of this section or which issues a new controlling order under subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."

Section 10.4. G.S. 52C-3-304 reads as rewritten:

"§ 52C-3-304. *Duties of initiating tribunal.*

(a) Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

- (1) To the responding tribunal or appropriate support enforcement agency in the responding state; or
- (2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this act or a law or procedure substantially similar to this act, a tribunal of this State may issue a certificate or other document and make findings required by the law of the responding state. If the responding State is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 10.5. G.S. 52C-3-305 reads as rewritten:

"§ 52C-3-305. *Duties and powers of responding tribunal.*

(a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

- (1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (3) Order income withholding;

- (4) Determine the amount of any arrears, and specify a method of payment;
- (5) Enforce orders by civil or criminal contempt, or both;
- (6) Set aside property for satisfaction of the support order;
- (7) Place liens and order execution on the obligor's property;
- (8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the order for arrest in any local and State computer systems for criminal warrants;
- (10) Order the obligor to seek appropriate employment by specified methods;
- (11) Award reasonable attorneys' fees and other fees and costs; and
- (12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this Chapter, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any."

Section 10.6. G.S. 52C-3-306 reads as rewritten:

"§ 52C-3-306. *Inappropriate tribunal.*

If a petition or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent."

Section 10.7. G.S. 52C-3-307 reads as rewritten:

"§ 52C-3-307. *Duties of support enforcement agency.*

(a) A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

- (1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;
- (2) Request an appropriate tribunal to set a date, time, and place for a hearing;
- (3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice ~~by first-class mail~~ to the petitioner;

- (5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by first-class mail~~ to the petitioner; and
- (6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

Section 10.8. Article 5 of Chapter 52C of the General Statutes reads as rewritten:

"ARTICLE 5.

"Direct Enforcement of Order of Another State Without Registration.

"§ 52C-5-501. ~~Recognition~~ Employer's receipt of income-withholding order of another state.

(a) An income-withholding order issued in another state may be sent by ~~first-class mail~~ to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

- (1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
- (2) Immediately provide a copy of the order to the obligor; and
- (3) Distribute the funds as directed in the withholding order.

~~(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~

- ~~(1) The person or agency designated to receive payments in the income-withholding order; or~~

- ~~(2) If no person or agency is designated, the obligee.~~

~~"§ 52C-5-502. Administrative enforcement of orders.~~

~~(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.~~

~~(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.~~

Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) of this section and G.S. 52C-5-503, the employer shall withhold and distribute the funds as directed in the income-withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the income-withholding order and forward the child support payment.

"§ 52C-5-503. Compliance with multiple income-withholding orders.

If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

"§ 52C-5-504. Immunity from civil liability.

An employer who complies with an income-withholding order issued in another state in accordance with this Article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

"§ 52C-5-505. Penalties for noncompliance.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

"§ 52C-5-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an

employer in this State in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest.

(b) The obligor shall give notice of the contest to:

- (1) A support enforcement agency providing services to the obligee;
- (2) Each employer that has directly received an income-withholding order; and
- (3) The person or agency designated to receive payments in the income-withholding order if no person or agency is designated, to the obligee.

"§ 52C-5-507. *Administrative enforcement of orders.*

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter."

Section 10.9. G.S. 52C-6-601 reads as rewritten:

"§ 52C-6-601. *Registration ~~or~~ of order for enforcement.*

A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement."

Section 10.10. G.S. 52C-6-605 reads as rewritten:

"§ 52C-6-605. *Notice of registration of order.*

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

- (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;
- (2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the notice~~;
- (3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrears and precludes further contest of that order with respect to any matter that could have been asserted; and
- (4) Of the amount of any alleged arrears.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the

income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable."

Section 10.11. G.S. 52C-6-606 reads as rewritten:

"§ 52C-6-606. *Procedure to contest validity or enforcement of registered order.*

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within 20 days after ~~the date of mailing or personal service of~~ notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first-class mail~~ of the date, time, and place of the hearing."

Section 10.12. G.S. 52C-6-611 reads as rewritten:

"§ 52C-6-611. *Modification of child support order of another state.*

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if, if G.S. 52C-6-613 does not apply and after notice and hearing, ~~hearing it finds that:~~

(1) The following requirements are met:

- a. The child, the individual obligee, and the obligor do not reside in the issuing state;
- b. A petitioner who is a nonresident of this State seeks modification; and
- c. The respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) ~~An individual party or the child~~ The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the individual parties who are individuals have filed a written consent in the issuing tribunal providing that for a tribunal of this State may to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or

more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under G.S. 52C-2-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

~~(e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered."~~

Section 10.13. Article 6 of Chapter 52C of the General Statutes is amended by adding the following new sections to read:

"§ 52C-6-613. Jurisdiction to modify child support order of another state when individual parties reside in this State.

(a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this Chapter, this Article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this Chapter do not apply.

"§ 52C-6-614. Notice to issuing tribunal of modification.

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction."

Section 10.14. The Revisor of Statutes shall cause to be printed separate from this Part all relevant portions of the official comments to the Uniform Interstate Family Support Act, as amended, as the Revisor deems appropriate.

PART 11. MISCELLANEOUS AND EFFECTIVE DATE.

Section 11. The Attorney General shall explore the feasibility of filing suit against the United States Government to challenge its authority to require states to conform with one or more of the provisions of Part D of Subchapter IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193. The Attorney General shall report findings and recommendations to the 1997 General Assembly, Regular Session 1998, upon its convening.

Section 11.1. The Constitution of North Carolina protects an individual's right to a trial by jury in paternity actions. The only way to

abolish this right is by amendment to the Constitution of North Carolina ratified by the qualified voters of this State. The General Assembly finds that because of the small number of jury trials requested in paternity actions in this State, and because of other procedures currently in place or authorized under this act, abolishment of the right would not increase the effectiveness and efficiency of the State's child support enforcement program. Moreover, any net benefit that might result from abolishing the right is substantially outweighed by the importance of preserving the right and thereby upholding the fundamental principles of individual liberty and due process of law. The North Carolina General Assembly, therefore, directs the Department of Human Resources to apply to the United States Department of Health and Human Services for an exemption from implementing the paragraph under 42 U.S.C. § 666(a)(5) requiring procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury. The Department shall report to the 1997 General Assembly, Regular Session 1998, upon its convening, on the status of the application for exemption.

Section 11.2. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 11.3. Except as otherwise provided in this act, this act becomes effective October 1, 1997 and expires on June 30, 1998.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:15 a.m. on the 28th day of August, 1997.

S.B. 143

CHAPTER 434

AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

"(a) Definitions. -- The following definitions apply in this section:

- (1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.
- (2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.
- (3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.
- (4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars (\$25.00) for the first offense and seventy-five dollars (\$75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 ~~misdemeanor~~, misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law.

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco ~~product~~, product or cigarette wrapping papers, the person shall be guilty of ~~an infraction as provided in G.S. 14-3-1~~, a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, or if any person shall aid or abet a person who is less than 18 years of age in purchasing, acquiring, or receiving or attempting to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law

enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee, or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee, or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed prior to December 1, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(f) Deferred prosecution. -- Notwithstanding G.S. 15A-1341(a1), any person charged with a misdemeanor under this section shall be qualified for deferred prosecution pursuant to Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously been placed on probation for a violation of this section and so states under oath."

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:17 a.m. on the 28th day of August, 1997.

S.B. 897

CHAPTER 435

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC SURVEILLANCE LAW.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 15A-286(21) reads as rewritten:

"(21) 'Wire communication' means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such communication, ~~but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~ communication."

Section 2. G.S. 15A-291 reads as rewritten:

"§ 15A-291. *Application for electronic surveillance order; judicial review panel.*

(a) The Attorney General or the Attorney General's designee may, pursuant to the provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a judicial review panel for an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application is made, and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review panel shall be composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North ~~Carolina~~, Carolina or an Associate Justice acting as the Chief Justice's designee, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice. A judicial review panel may be appointed by the Chief Justice or an Associate Justice acting as the Chief Justice's designee pursuant to the Attorney General's written notification upon the notification of the Attorney General's Office of his ~~the~~ intent to apply for an electronic surveillance order.

(b) A judicial review panel is hereby authorized to grant orders valid throughout the State for the interception of wire, oral, or electronic communications. Applications for such orders may be made by the Attorney General or the Attorney General's designee, ~~and by no other person~~. The Attorney ~~General~~, General or the Attorney General's designee in applying for such orders, and a judicial review panel in granting such orders, shall comply with all procedural requirements of section 2518 of Chapter 119 of the United States Code. The Attorney General or the Attorney General's

designee may make emergency applications as provided by section 2518 of Chapter 119 of the United States Code. In applying section 2518 the word "judge" in that section shall be construed to refer to the judicial review panel, unless the context otherwise indicates. The judicial review panel may stipulate any special conditions it feels necessary to assure compliance with the terms of this act.

(c) No judge who sits as a member of a judicial review panel shall preside at any trial or proceeding resulting from or in any manner related to information gained pursuant to a lawful electronic surveillance order issued by that panel.

(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

- (1) The identity of the office requesting the application;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:
 - a. Details as to the particular offense that has been, or is being committed;
 - b. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - c. A particular description of the type of communications sought to be intercepted; and
 - d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;
- (3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;
- (5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and
- (6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel."

Section 2.1. G.S. 15A-293(a) reads as rewritten:

"(a) Upon application by the Attorney General, General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

- (1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;
- (2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and
- (4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection."

Section 3. G.S. 15A-294 is amended by adding a new subsection to read:

"(d1) The notification required pursuant to G.S. 15A-294(d) may be delayed if the judicial review panel has probable cause to believe that notification would substantially jeopardize the success of an electronic surveillance or a criminal investigation. Delay of notification shall be only by order of the judicial review panel. The period of delay shall be designated by the judicial review panel and may be extended from time to time until the jeopardy to the electronic surveillance or the criminal investigation dissipates."

Section 4. G.S. 15A-298 reads as rewritten:

"§ 15A-298. *Subpoena authority.*

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or his the Director's designee may issue an administrative subpoena to a communications common carrier or an electronic communications service to compel production of business records if the records:

- (1) Disclose information concerning local or long-distance telephone toll billing records or subscriber information; and
- (2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation."

Section 5. This act is effective when it becomes law and applies to all applications filed on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:18 a.m. on the 28th day of August, 1997.

H.B. 847

CHAPTER 436

AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 reads as rewritten:

"§ 162A-6. *Powers of authority generally.*

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each ~~such~~ authority ~~is, subject to the provisions of G.S. 162A-7, hereby~~ is authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places as it may designate;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;
- (6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;
- (7) To issue revenue refunding bonds of the authority as hereinafter provided;
- (8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;
- (9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;
- (10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the

- exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;
- (11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;
- (12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;
- (13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;
- (14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and
- (14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and

sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

A "assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

- (14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.
- (14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.
- (14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer

connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

- (15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.
- (16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional, and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the

extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subsection.

(c) In addition to the powers given under subsection (a) of this section, an authority that holds a certificate issued after December 1, 1991, by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

- (1) To relocate a road or to construct a road necessitated by construction of water supply project.
- (2) To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
- (3) To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or to improve drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156 of the General Statutes.
- (4) To acquire property for wetlands mitigation."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:19 a.m. on the 28th day of August, 1997.

H.B. 990

CHAPTER 437

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES AND CERTAIN SMALL

WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;
 2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than 10 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 15 or more building lots, without regard to the number of actual customers connected;
 3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
 4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any

of the foregoing services to another person for distribution to or for the public for compensation.

- c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
- d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation; corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.
- e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).
- f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public

for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

- g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.
- h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.
- i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.
- j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

Section 2. Article 6 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water or sewer utilities.

The Commission may exempt any water or sewer utilities owned by nonprofit membership or consumer-owned corporations from regulation under this Chapter, subject to those conditions the Commission deems appropriate, if:

- (1) The members or consumer-owners of the corporation elect the governing board of the corporation pursuant to the corporation's articles of incorporation and bylaws; and
- (2) The Commission finds that the organization and the quality of service of the utility are adequate to protect the public interest to the extent that additional regulation is not required by the public convenience and necessity."

Section 3. G.S. 62-300(a) is amended by adding a new subdivision to read:

- "(15) One hundred dollars (\$100.00) for each application for exemption filed by nonprofit and consumer-owned water or sewer utilities pursuant to G.S. 62-110.5."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:19 a.m. on the 28th day of August, 1997.

H.B. 1115

CHAPTER 438

AN ACT TO PROHIBIT THE CANCELLATION OF INSURANCE POLICIES THAT PROVIDE COVERAGE FOR CHURCHES FOR LOSSES RESULTING FROM A FIRE.

The General Assembly of North Carolina enacts:

Section 1. Article 43 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-43-40. Cancellation of fire insurance for buildings owned by religious organizations prohibited in certain circumstances.

(a) An insurer shall not cancel or decline to renew an insurance policy providing coverage for losses resulting from fire for a building owned by a religious organization solely because of:

- (1) A previous occurrence of arson, unless the occurrence of arson was the act of a member of the religious organization that owns the building; or
- (2) An oral or written statement directed to the religious organization or a member of the religious organization and threatening an act of arson against the religious organization.

This subsection applies only if:

- (1) The religious organization reports all arson threats, arson attempts, or acts of arson to the appropriate law enforcement agency within 48 hours of discovery of such event and to the insurer not later than the second business day after the arson threat, arson attempt or act of arson is reported to the appropriate law enforcement agency; and
- (2) The members of the religious organization fully cooperate with law enforcement and the insurer in any investigation of and the prosecution of all offenses related to, an arson threat, an arson attempt, or an act of arson.

(b) As a condition of insurance policy renewal or continuance, an insurer may require that a religious organization implement all reasonable mitigation, loss control, and fire control measures recommended by the local law enforcement agency, the local fire department, or the insurer.

(c) As used in this section, 'religious organization' means any church, ecclesiastical, or denominational organization, or any organization that meets at an established physical place for worship in this State at which nonprofit religious services and activities are regularly conducted.

(d) The Commissioner may revoke, suspend, or refuse to renew the license of any insurer that violates this section pursuant to G.S. 58-3-100."

Section 2. This act becomes effective October 1, 1997, and applies to insurance policies issued or renewed on or after January 1, 1998. This act expires January 1, 2000.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:20 a.m. on the 28th day of August, 1997.

H.B. 1157

CHAPTER 439

AN ACT TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT OBLIGATIONS, TO DELETE THE CAP ON CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES, AND TO ALLOW THE DEPARTMENT OF REVENUE TO DEDUCT ITS COST OF ADMINISTERING THE DISTRIBUTION OF GROSS RECEIPTS TO CITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State."

Section 2. G.S. 105-130.7 reads as rewritten:

"§ 105-130.7. Deductible portion of dividends.

(a) Regulated Investment Companies. -- A corporation may deduct the proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by the regulated investment company or real estate investment trust that would not be taxed by this State if received directly by the corporation.

(b) Subsidiary Dividends. -- A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina may deduct all

dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.

Dividends from stock issued by a corporation are deductible to the extent provided in this section.

- ~~(1), (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~
- ~~(3) A corporation may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.~~
- ~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~
- ~~(4) A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.~~
- ~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~
- ~~(6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation under subdivision (3) of this section exceed fifteen thousand dollars (\$15,000) for the taxable year."~~

Section 3. G.S. 105-116.1(b), as enacted by Section 1 of Session Law 97-118, reads as rewritten:

"(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies, natural gas companies, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back ~~amount.~~ amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter."

Section 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:21 a.m. on the 28th day of August, 1997.

S.B. 273

CHAPTER 440

AN ACT PERTAINING TO THE COVERAGE OF POSTMASTECTOMY INPATIENT CARE UNDER HEALTH INSURANCE PLANS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-3-171.1. Coverage for postmastectomy inpatient care.

(a) Every entity providing a health benefit plan that provides coverage for mastectomy, including coverage for postmastectomy inpatient care, shall ensure that the decision whether to discharge the patient following mastectomy is made by the attending physician in consultation with the patient, and shall further ensure that the length of postmastectomy hospital stay is based on the unique characteristics of each patient taking into consideration the health and medical history of the patient.

(b) As used in this section, 'health benefit plans' means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA.

(c) As used in this section, 'mastectomy' means the surgical removal of all or part of a breast as a result of breast cancer or breast disease."

Section 2. This act is effective when it becomes law and applies to health benefit plans issued, renewed, or amended on and after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:22 a.m. on the 28th day of August, 1997.

S.B. 561

CHAPTER 441

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES, TO EXEMPT ACTIVE OR RETIRED COMPANY POLICE OFFICERS FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR THE PERMIT WITHIN TWO YEARS OF RETIREMENT, AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. -- Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

- (1) Real property owned by or in the possession and control of their employer.
- (2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.
- (3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

Section 2. G.S. 14-415.10(4) as enacted by S.L. 1997-274, reads as rewritten:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a local or State local, State, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

- a. Immediately before retirement, the individual was a qualified law enforcement officer with a local or State local, State, or company police agency in North Carolina.
- b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement officer, officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.
- c. The individual is not prohibited by State or federal law from receiving a firearm."

Section 3. G.S. 14-415.10(5), as enacted by S.L. 1997-274, reads as rewritten:

"(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a local or State local, State, or company police agency in North Carolina who satisfies all of the following:

- a. The individual is authorized by the agency to carry a handgun in the course of duty.
- b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.
- c. The individual meets the requirements established by the agency regarding handguns."

Section 4. G.S. 14-415.12(b)(6) reads as rewritten:

"(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision."

Section 5. Sections 2 and 3 of this act become effective December 1, 1997. The remainder of this act is effective when it becomes law, and Section 4 applies to applications made before, on, or after the effective date.

In the General Assembly read three times and ratified this the 19th day of August, 1997.

Became law upon approval of the Governor at 10:23 a.m. on the 28th day of August, 1997.



